

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 MEETING: VOLUNTARY INDUSTRY INITIATIVES IN
5 LIEU OF REGULATORY ACTIONS

6
7 U.S. Nuclear Regulatory Commission

8 One White Flint North

9 Room O-8-B-4

10 11555 Rockville Pike

11 Rockville, Maryland 20852-2738

12
13 Tuesday, December 21, 1999

14
15 The above-entitled meeting commenced, pursuant to
16 notice, at 8:30 a.m.

17 PARTICIPANTS:

18 G.E. (GENE) CARPENTER, NRR

19 R.A. HERMAN, NRR

20 DEE JUBB, Westinghouse

21 NOEL DUDLEY, ACRS

22 GARY VINE, EPRI

23 ALEX MARION, NEI

24 DAVE MODEEN, NEI

25 BRIAN SHERON, NRR

PARTICIPANTS: [Continued]

BILL RECKLEY, NRR

JIM SHAPARER, NRR

BOB PALLA, NRR

JACK STROSNIDER, NRR

DENNIS DAMBLY, OGC

MELVIN FRANK, Scientech

CHARLES BRINKMAN, ABB CE Nuclear Power

DEANN E. RALEIGH, SERCH, Bechtel Power

MEENA KHANNA, NRR

W. H. BATEMAN, NRR

TIMOTHY COLLINS, NRR

BILL DEAN, NRR

JOE COLACCINO, NRR

MARIE POHLDA, NRR

BARRY WESTREICH, OE

P R O C E E D I N G S

[8:30 a.m.]

MR. CARPENTER: Good morning. I am Gene Carpenter.

I am the Lead Project Manager in NRR here for the BWR Vessel and Internals Project work that we have been doing, which is a voluntary industry initiative.

Today is the third meeting that we have had on voluntary industry initiatives. The first one was held about a year ago in Chicago, in September. The second one was held approximately six weeks ago now, also in Chicago. This is the follow-on for that.

Basically what we are doing here is we are going to be talking about what is a voluntary industry initiative, what the Staff can do to quantify how we handle voluntary industry initiatives, and what the public and specifically NEI would like to tell us that they would like us to do about voluntary industry initiatives. This was at NEI's request that we go ahead and have this follow-up meeting. Before we get through with introductions and everything, I would like to do one housekeeping chore. There is a sign-in sheet going around someplace -- if everybody would make sure that they please sign in. Whoever needs a copy of that, please let me know at the end of the meeting.

The meeting is being transcribed, so we will have a copy of that available to you shortly electronically. I don't

1 think that there is anything that is going to be proprietary
2 said today, is that correct? No. Very good.

3 Again, my name is Gene Carpenter. Introductions --
4 introduce yourself.

5 MR. HERMAN: Bob Herman.

6 MR. SHERON: I am Brian Sheron.

7 MR. STROSNIDER: Jack Strosnider

8 MR. VINE: Gary Vine from EPRI.

9 MR. MARION: Alex Marion, NEI.

10 MR. MODEEN: Dave Modeen, NEI.

11 MS. RALEIGH: Deann Raleigh, SERCH Group, Bechtel.

12 MR. BRINKMAN: Charlie Brinkman, ABB and representing
13 the CEOG.

14 MR. DAMBLY: Dennis Dambly, NRC, OGC.

15 MR. RECKLEY: Bill Reckley, NRR.

16 MS. JUBB: Dee Jubb, Westinghouse.

17 MR. PALLA: Bob Palla -- NRR.

18 MR. DUDLEY: Noel Dudley, ACRS.

19 MR. DEAN: Bill Dean, Inspection Program Manager.

20 MR. SHAPARER: Jim Shaparar, NRR.

21 MR. CARPENTER: Okay, very good.

22 Brian, do you have any comments before we start?

23 MR. SHERON: No.

24 MR. CARPENTER: Jack?

25 MR. STROSNIDER: No, no really. I guess just to

1 reflect on where we were at the last meeting.

2 We had identified a number of areas in which -- that
3 we think need to be addressed as part of the protocol for
4 dealing with voluntary initiatives and we indicated that we
5 would be looking for suggestions, feedback, comments on each of
6 those areas. That will be done more formally or formally
7 through a Federal Register notice which is out, but I think
8 part of the -- one of the main reasons for this meeting is to
9 see if NEI or the industry representatives or anybody else here
10 has any comments that they want to provide at this time to help
11 us formulate this thing.

12 MR. CARPENTER: Alex?

13 MR. MARION: Thank you for the opportunity to talk to
14 you in more detail about the concept involving voluntary
15 industry initiatives. We are hoping today that we can have an
16 open and candid discussion. It's really important for us to
17 come to some understanding in terms of definitions of some of
18 the terms and definitions of some of the elements of this
19 concept. We are hoping that we can leave today's meeting with
20 an understanding or better understanding of NRC expectations
21 relative to the application of voluntary industry initiatives
22 within the regulatory process, and feel that if we achieve that
23 understanding we will be able to move forward in a
24 complementary fashion.

25 I do have to tell you that upon reading SECY 99-063,

1 there were a number of concerns with the content of that SECY
2 paper and I don't know if the NRC is interested in some
3 comments on it, but the basic concerns stem from consistency in
4 terms of our understanding of regulatory decision-making and
5 how that would play out in the voluntary initiative space.

6 So I would just suggest to you that if NRC perceives
7 any benefit in NEI submitting comments on that SECY paper we
8 would be more than happy to do so.

9 Alternatively, we could save that effort and focus on
10 commenting on the Federal Register notice of the Staff's
11 proposal.

12 MR. HERMAN: Just to comment, Alex, on that, that
13 paper before the SRM was issued by the Commission, I believe
14 was sent to NEI and comments were received from NEI by
15 certainly one of the Commissioners and incorporated in the SRM
16 is what our understanding was.

17 MR. MARION: Comments were not submitted to that SECY
18 paper. Anyway, be that as it may, there's an opportunity for
19 us to interact and develop an understanding.

20 Let me just begin with --

21 MR. SHERON: Could you just expand on what you mean
22 by an understanding of --

23 MR. MARION: Well, a number of aspects of the SECY
24 created some concern from the standpoint of the perception that
25 NRC desires to use voluntary industry initiatives as an

1 alternative to the more rigorous decision making process
2 involving the fact that -- that reading the words and that's
3 one of the reactions.

4 MR. SHERON: You saw the paper that was sent on the
5 new generic communications. I forget the SECY number. Jim, if
6 you could help me -- because I think that these are very
7 closely tied, that's why, in my mind.

8 My concept is that the industry did not like the
9 generic letter approach and I am not -- we can discuss the
10 question of whether you thought it was inappropriate
11 backfitting, the use of 50.54(f) or not, but in my mind the
12 issue was the industry did not like the generic letter approach
13 and there were some drawbacks to it, okay, because a lot of
14 times generic letters were not applicable to every licensee and
15 in terms of what they were asking for.

16 The thought was that before we go off and just issue
17 a generic letter saying send us 5000 reams of information or
18 whatever on some subject and the like, we felt it would be
19 better to first identify what is the technical concern that the
20 Staff has and to present that to the industry and to give the
21 industry an opportunity to decide whether they wanted to
22 voluntarily address that concern.

23 The reason is you can address it probably in a much
24 more efficient manner if you basically get to do it from the
25 start, as opposed to just responding to a generic letter. You

1 may have risk assessments for example that can come in and say
2 this is only a problem for this class of plants and not for
3 this class and that's why. You may say, gee, I understand you
4 problem but I've got a better way to address this. That's
5 fine. Okay.

6 But the idea was to give the industry a cut at it.
7 In other words, we are telling you what the concern, the safety
8 concern, and it is not just frivolous in the sense that every
9 time everybody dreams up I got a problem let's go run to the
10 industry and have them spend a jillion dollars on it. That's
11 not the case.

12 We consider the threshold for bringing something up
13 to the industry about as the same threshold as for issuing a
14 generic letter, the thought being that if the industry declined
15 the opportunity to take something on as a voluntary industry
16 initiative we would probably pursue the next step, which would
17 be a generic letter. Our feeling is that this would pass the
18 threshold, and right now the threshold is before the Staff goes
19 off and initiates a generic letter, they bring it before the
20 NRR Executive Team and they make their case, and if the
21 Executive Team concludes that basically the generic letter is
22 the appropriate way to go with the issue from a safety concern
23 as well as procedural aspect, then the Staff is given the
24 go-ahead to prepare it.

25 Recalling that generic letters go through a CRGR

1 review, they go out for public comment draft, and ultimately
2 before they are issued they go to the Commission, okay? -- so
3 that is kind of the whole process that we use generic letters
4 for and the whole idea is that if we are willing, if the Staff
5 believes that the issue is such that we would be willing to
6 pursue that process, then we would first raise it to the
7 industry and give them the opportunity to come back and say we
8 understand what your problem is, your technical concern, and we
9 are willing to go off and address it and come back to you with
10 a proposed resolution.

11 That in a nutshell is what I envision as the
12 voluntary initiative process.

13 MR. CARPENTER: And we have had some success with
14 that in the past, specifically with the BWR Owners Group in the
15 Vessel Internals Project that we have come to them with several
16 issues that we had considered raising generic letters to.

17 MR. SHERON: I think we have line cracking too. I
18 think with the materials reliability --

19 MR. CARPENTER: HF1 cracking, barrel back bolts, et
20 cetera. We brought that to the industry and the industry,
21 instead of taking it on as a generic letter they took it on as
22 a voluntary industry initiative, and it has been working quite
23 well.

24 MR. HERMAN: I think the other piece of it was the
25 109 piece that was in there, the discussions of that. That was

1 a binning type of thing for whether or not something is -- we
2 were looking at things whether or not they were within the
3 design basis or outside of the design basis was one set of
4 considerations that were discussed in terms of trying to bin
5 the issue, whether there was any regulatory concern about the
6 issue at all, and those type of things were tied to what kind
7 of involvement and what type of commitment there may have been
8 depending on what the issue was.

9 That was basically the only use of the 109 type of
10 stuff in the whole thing, and I think the other thing that was
11 agreed upon at one of the earlier meetings that Steve Floyd
12 attended was that things that turn out to be questions of
13 public safety, you know, the highest threshold, are outside of
14 the box and what was in the box were things that passed 50.109
15 in terms of being justifiable, things that were compliance
16 related but I think everything Brian said in terms of the rest
17 of the process, that was part of the process too.

18 MR. VINE: Can I respond to Bob's comment?

19 SECY 90-63 talks about backfits in two contexts. One
20 is the binning process and the other is in the regulatory
21 decisionmaking process and there are two references in the SECY
22 to the latter.

23 Now I don't have any problem with the former, namely
24 how you use the backfit rule to bin various types of
25 initiatives. I think the problem with the SECY as it relates

1 to the backfit rule is in the other two references where you
2 basically go through a logic that says that if an issue comes
3 up, that if the industry volunteers to do something then the
4 NRC doesn't have to do any backfit analysis.

5 Then the issue moves forward with whatever action the
6 industry takes and moves into enforcement space without ever
7 doing an analysis to determine whether or not there was a
8 significant safety issue involved.

9 If you dissect the words in those two locations in
10 the SECY it is almost as if the onus is put on the industry to
11 do the backfit analysis to determine whether or not we should
12 be doing something under the criterion of the backfit rule.

13 MR. MARION: Yes, but Brian made it clear that that
14 wasn't the intent.

15 MR. VINE: Right. That's what the words say.

16 MR. SHERON: A 50.54(f) letter, and this is where we
17 probably part company in terms of interpretation, and we parted
18 company when we had our meeting with Winston & Strawn and we
19 basically agreed to disagree.

20 When you read a generic letter, and probably with the
21 exception of the charcoal filter testing paper, which we agree
22 was a backfit and it was a compliance backfit, most if not all
23 generic letters do not require anything, but we do question.

24 If we have a question on whether or not a Licensee
25 remains in compliance with a regulation because of new

1 information that has come to light, then basically what we do
2 is we ask you to provide information as to why you, the
3 Licensee, believe you are still in compliance with the
4 regulation in light of new information.

5 It doesn't say you have to change anything or do
6 something different.

7 Now most Licensees go "aw, rats" and say, you know, I
8 can't really justify -- because we lay out our information. We
9 say we have all this information that seems contrary to the
10 fact that you are complying with the regulation, but given all
11 this data and this information, we need you to tell us why you
12 still think you comply.

13 Well, most Licensees will go yeah, you're probably
14 right, or, you know, I can interpret it that way, and they will
15 go and they will fix whatever they've got to fix, and they call
16 it a backfit. It is not a backfit.

17 The Licensee has the option to come in and argue and
18 say here is why I believe I still comply with the regulations
19 in light of all this information.

20 If a Licensee, however, takes on a backfit -- I'm
21 sorry, not a backfit but in lieu of a generic letter, where we
22 raise an issue and we say, gee, we have some new information
23 here. We think that it raises a question as to whether or not
24 Licensees comply with the regulations. We would like to turn
25 that over to the industry as a voluntary initiative. The

1 industry comes back and says we are going to propose some new
2 inspection program or whatever, okay? -- and we are going to
3 inspect this or whatever and we are going to monitor it more
4 closely, and that way we will make sure we stay in compliance.

5 Then the inspectors go out and they say, gee, you
6 didn't do an inspection the way you said you were, okay? Well,
7 we would interpret that as that inspection was needed to
8 maintain compliance with the regulation, and if you didn't do
9 it then we're raising the question of compliance.

10 MR. HERMAN: I am not even sure that you would ever
11 get that far. I mean you never get to that -- let's take the
12 Duke program for example of how it was implemented.

13 There were commitments on the part of the Licensee
14 that said we are going to follow the programs. They came up
15 with inspection programs, flaw evaluation programs, and
16 alternative type repair programs, okay? They're all part of
17 that.

18 The way that got implemented is the inspection
19 procedures and the flaw evaluation procedures got put in the
20 Appendix B program at the sites, and I mean that is the extent
21 of the regulatory end of it is it is not any different than any
22 other NDE procedure or any different than anything else --

23 MR. SHERON: What was said was that if a Licensee --

24 MR. HERMAN: It is how it is implemented.

25 MR. SHERON: -- implements the BWR VIP programs,

1 topicals or whatever, we would consider that as acceptable
2 compliance with the regulations.

3 Now we did not say, gee, if you don't do it we are
4 going to cite you, okay? What we said is that if you do it
5 that way, no questions asked. That is acceptable compliance.
6 If you don't do it that way, we may challenge. We may ask
7 questions as to why it continues to meet the regulations.

8 The Licensee may have a very good program, an
9 alternative program, and we may say good, we agree, you still
10 meet the regulations. We also may say no, we don't think that
11 does it. In other words, it increases our level of
12 questioning, you might say.

13 If somebody says I've got a program that has been
14 approved by the NRC, we are following it -- it's done. You
15 know, there's no questions. If somebody says they want to do
16 something different, that doesn't mean you are not in
17 compliance. It just means we may have to scratch the surface a
18 little bit deeper, that's all.

19 MR. HERMAN: I think what we have done in the past is
20 we have had all kinds of levels of how formal we have gotten in
21 terms of commitments on how the programs have gone.

22 There was a Westinghouse program on control rod drive
23 mechanism housings where they had some severe fabrication
24 cracks. The Westinghouse Owners Group addressed that program.
25 The fact is we met with the regulatory response group to kick

1 it off, so it went all the way through our process before the
2 thing ever started.

3 They basically came up with some voluntary
4 inspections. We had some discussions at one point about how
5 far you needed to go, how much inspections you needed to do.
6 There were some statistical arguments made, some risk arguments
7 made on the thing, and basically it was put to bed based on
8 what I will call a risk-informed decision in terms of
9 statistics, deterministic stuff and risk, and that one was done
10 without a commitment.

11 I think what we are looking to do in developing the
12 process on what the Commission asked for, at least in our view,
13 was that we define the process, how you kick something off, and
14 try to do these things consistently. That is part of what the
15 process development is intended to do.

16 MR. MARION: I understand all that, and the concepts
17 seem to be fundamentally straightforward, and I am hoping that
18 we can work out the details, but before we get into the
19 details, let me just make a couple comments.

20 Generic letters have been a necessary tool of the
21 NRC. The thing that we have always argued about or held lively
22 discussions with the NRC about was the scope and magnitude of
23 the problem and the regulatory basis for the action being
24 requested in the generic letter.

25 I submit that if we don't clarify those specifics, we

1 are going to have the same kind of lively discussions as we
2 move through this process, so we really need to get this
3 understanding established, and we are talking about use of the
4 compliance exception.

5 NRC, as Gary indicated, we believe the NRC is
6 responsible for the burden of proof to demonstrate the explicit
7 regulation that needs to be addressed for Licensees to
8 understand what NRC expectations are relative to information
9 being provided.

10 MR. SHERON: Let me submit to you, okay, that the
11 NRC, if anything, has probably erred in the sense that we have
12 issued 50.54(f) letters that have done nothing more than ask
13 for information under 50.54(f), which is a different standard
14 than 109, but, trying to be nice guys, we used the words
15 "compliance exception" and that is purple letters, purple
16 words, gets everybody excited.

17 We probably shouldn't have done it.

18 The only one where we did it or I will admit is on
19 the charcoal filter testing. We had enough evidence in front
20 of us from our own studies that basically said if you use the
21 current standard you are not in compliance, period. The case
22 was made and that is why when we said in that paper that the
23 current standard that people were using, the 1979 -- whatever
24 it was -- was no longer acceptable, that was a backfit, because
25 we said it doesn't matter what you are doing now, you must --

1 if you are using that standard you must do something different.
2 That was a backfit and we went through and we took a hard look
3 and we said yeah, we had done enough studies and we believe we
4 had passed the burden of proof test that said if you use that
5 we cannot guarantee -- we have enough evidence to show that a
6 Licensee will most likely not comply with Part 100.

7 I mean we can argue whether or not you think that is
8 significant enough --

9 MR. MARION: Yes, but we are not here to discuss
10 that. I would suggest we move on.

11 MR. SHERON: What I am saying is that most 50.54(f)
12 letters did not impose a backfit. They made have used the word
13 "compliance exception" -- it was probably wrong to do it --
14 because if you read the words, they don't say you must do
15 something different.

16 MR. MARION: Okay. I would like to move on.

17 One more point I wanted to make about generic
18 communications and I agree with you completely that the generic
19 communication process and how it is used in dealing with
20 voluntary industry initiatives is the nexus or the connection
21 between the two, and I would suggest that maybe some time in
22 the future we have a meeting to discuss the comments we
23 submitted on the generic communication process back in May
24 because fundamentally what we were trying to do was work
25 through all of the confusion that we have that the Licensees

1 have in understanding why the NRC is pursuing a particular
2 communication product versus another one and what is their
3 expectation -- do they want action? Do they want information?
4 Are they just communicating information?

5 I think we need to have an open discussion on those
6 concepts because to clarify those understandings in the generic
7 communication process is the same objective we have relative to
8 understanding how you want to apply voluntary industry
9 initiatives.

10 We need to understand how it all fits together, okay,
11 and that is very important.

12 MR. SHERON: Yes, I mean I would just -- for example,
13 we brought up at the last NRR/NEI Senior Management Meeting the
14 question of the switchyard vars, okay? We said we were going
15 to propose that as a voluntary industry initiative, and we'll
16 lay out in that letter exactly what the regulatory concern is
17 with regard to compliance and the like, and now the question is
18 that what can the industry come back and show to us as a
19 program or something that gives us assurance?

20 In other words, we are not saying that every plant is
21 not in compliance. What we are saying is that based on what we
22 saw at Calloway we don't think that plants have enough
23 information to assure they remain in compliance.

24 For example, if they don't monitor what kind of vars,
25 what kind of megawatts or whatever they are cranking through

1 the switchyard, they don't know that if their plant drops
2 offline they are not going to see some unacceptable dip in the
3 offsite voltage, so we are saying that somebody is not in
4 compliance but we are raising the question of, gee, this is
5 something that we never really thought of and it may be a
6 product of a deregulated industry. What can the industry
7 propose that would give us assurance that the plants will
8 remain in compliance with GDC-17, or at least have knowledge or
9 are monitoring something so that they have enough knowledge to
10 say I continue to comply with GDC-17?

11 That is all it's going to say.

12 MR. MARION: And that is perfectly fair, except I
13 would suggest, maybe not in this case -- you probably have the
14 letter ready to go out -- but I would suggest in the future a
15 meeting to discuss the problem and magnitude, because once we
16 get through that discuss and reach an understanding then it
17 becomes very clear what the NRC needs to do and also very clear
18 what the industry can do to help in some complementary fashion
19 to deal with the problem. That is very important.

20 I think the record speaks for itself in demonstrating
21 how successful those early interactions are, so I would just
22 offer that for future consideration.

23 MR. HERMAN: I fully agree with you on that and I
24 think on a lot of the issues that have been what I will call
25 hardware-related type issues where you find something broken,

1 that is exactly what has happened. I would anticipate as part
2 of the process that will develop that part of the process will
3 be to have a communications meeting before you issue any paper,
4 because we have generally done that on almost everything we
5 have ever been involved in.

6 We have done the same thing with the discussions.
7 One of the discussions in the stakeholder meeting that you were
8 at, Alex, that were relevant to the whole thing was those kind
9 of things that come up because of a problem -- you find
10 something broken, okay, and you address something broken.

11 The other kind of issues were problems that maybe
12 step outside of the design basis, that pass the 109 backfit,
13 things that I will call -- I won't call them exactly
14 programmatic but things that you might be able to put on your
15 plate at the beginning of the year and say this is an area we
16 are interested in -- severe accidents, whatever it is, okay,
17 and that would be the subject of a once a year or twice a year
18 meeting that was suggested by Mike Tuckman at Duke Power. We
19 thought that was a really good idea, to do it for planning
20 purposes -- both in terms of us, in terms of the industry, and
21 in terms of talking about resources, so I think there's two
22 bins of stuff.

23 One is stuff that you know about, that you can plan
24 for in the beginning of the year and say these are going to be
25 the things that are on the plate for initiatives for the year

1 and then those other things that happen because you will find
2 something during the year. That is what we anticipate anyway,
3 and that is what I think is going to go in the process.

4 MR. MARION: Yes, from a process point of view, it
5 seems to make sense at this particular point. Now whether it
6 really is effective over the course of a year or two we will
7 just have to wait and see, because a lot of issues come up and
8 you need to meet with the industry to engage them all right
9 away, and so there are going to be a number of things that you
10 can't plan and prepare for, but we still have to be responsive.

11 Let me just -- you brought up hardware issues. They
12 are the easier ones to deal with, because that is
13 straightforward. You can develop data. You can do
14 inspections, provide results, et cetera.

15 MR. MODEEN: Alex, I am not even sure that is
16 necessarily true. I guess the examples Staff has cited so far
17 are the ones that I would call the significant issues that,
18 yes, it is easy to reach agreement early on that there is an
19 issue to be dealt with, but I am dealing with several of them
20 that we flat out have disagreements as to whether or not the
21 issue warrants that attention.

22 We agree it warrants the dialogue and evaluation and
23 discussion, and the thing when we get in the details is whether
24 or not -- okay, what if we get to the endpoint and we disagree
25 on the significance, and we are not looking to volunteer for

1 anything. That is --

2 MR. MARION: You're one step ahead --

3 MR. MODEEN: I'm sorry.

4 MR. MARION: That's all right --

5 MR. SHERON: That's all right. If you guys go off,
6 for example, and do a risk study and you come back and show us
7 that from a risk standpoint an issue is a no, nevermind, that's
8 okay.

9 MR. MODEEN: It's hard to get to the no, nevermind
10 gradation sometimes --

11 MR. SHERON: But if there is a compliance issue, and
12 a lot of times I will admit that may be a problem -- something
13 may be very low on a risk scale, but there is a compliance
14 issue. Well, to me that says maybe I ought to change the
15 regulation.

16 If I have got a regulation that is requiring you to
17 do something that makes no sense from a risk standpoint, it is
18 down in it and it is costing you a lot of money, something is
19 wrong with the regulation. We need to know that. That is
20 something else you can bring to us. That is Option 3 of
21 99,300.

22 MR. VINE: What you've said here, I think, is kind of
23 reassuring because you've described a process where there is
24 going to be a lot of communication, and where you're going to
25 make the case when you go to the industry and say, we'd like

1 you to consider this as a volunteer industry initiative.

2 You're going to make the case that shows why there's
3 a regulatory concern, what the compliance issue is.

4 And the problem with the SECY is that it says that as
5 long as the industry steps up and does something to address a
6 concern -- without any analysis of the backfit considerations
7 -- that the NRC would never even have to go through those
8 considerations; that's what the SECY says.

9 So, it basically lays out a process where by if the
10 staff comes to an industry group, and the industry groups says,
11 sure, we'll do that, that no one would ever do any of that
12 analysis, and then you would end up in a situation, according
13 to the SECY, where there's enforcement action taken against a
14 voluntary industry initiative and compliance with that, without
15 ever having gone through the rigorous process.

16 MR. SHERON: All right, first off --

17 MR. VINE: You said we're not going to do that.

18 MR. SHERON: Well, first off, I would argue that if
19 it's a true backfit, safety enhancement backfit, we would
20 probably have already done the backfit analysis before we came
21 to the industry. We're not just going to walk in and say, gee,
22 we think it's nice if you paint your containments pink or
23 something, okay, without having done a backfit analysis, okay?

24 We're going to have the backfit analysis in our back
25 pocket, and we're going to be able to say, you know, we think

1 you need to do this, and here's why, okay?

2 We'll give you the opportunity to see that, all
3 right? And if we come in with a compliance, we'll explain that
4 to you; we'll explain why we think it's a compliance, okay?

5 And, you know, that's the one where you say, gee,
6 we're not going to do that, all right, then, you know, staff
7 has to fish or cut bait, you know, which, as I said, we would
8 have most likely have already concluded this, we'd have risen
9 to the level of a 5054, okay?

10 MR. HERMAN: One of the other things that, again, was
11 discussed in the last stakeholder meeting, was the threshold
12 for kicking off initiatives, and who on the NRC side was going
13 to be the kicker-offer, okay?

14 And if you looked at the Commission paper, there were
15 some discussions in there, should that be a Commission
16 responsibility? Should it be an EDO responsibility? Should it
17 be an Office-level responsibility?

18 I guess where we would come out right now is that we
19 think it's probably ET Office level as about probably
20 appropriate for doing it, because that's what we have
21 traditionally done in the past.

22 I mean, I can't just imagine that any staff member is
23 going to get on the phone and call up Alex and say, Alex, I
24 haven't talked to anybody above me in the organization, but I'd
25 really like to have a meeting with you on this issue because I

1 think I need to do this.

2 I mean, it's just not going to happen that way, and
3 the process is not going to be defined that way.

4 I mean, I just don't think how we'd ever get to that
5 point without it going up through the management chain anyway.

6 MR. MARION: I would suggest that the EDO level might
7 be appropriate. The reason I say that is because the more
8 formalized industrywide actions that are undertaken by NEI, are
9 undertaken with the buy-in of the chief nuclear officers.

10 And when that occurs, we traditionally have sent in
11 the letter to the EDO, apprising him of that decision, et
12 cetera.

13 Now, we intend to still do that in the future on
14 those kinds of actions that are taken through the NEI process.

15 I'm just offering that as a point of information,
16 relative to our thinking on the way this has been done in the
17 past.

18 MR. VINE: But this gets us right into the issue of
19 how do you define an initiative? What you just said would
20 never happen, this informal communication between a staff who
21 has a concern and the industry.

22 In fact, it goes on all the time. And in many cases,
23 it goes on in a very healthy way, where you have staffers with
24 information or concerns, and they share it with a group that's
25 working on that issue.

1 And that interaction is healthy because it improves
2 the guideline documents that we're working on at EPRI or
3 wherever, an owners group, and as long as it doesn't rise to
4 the threshold of becoming subject to enforcement action, that's
5 healthy.

6 So I think that the trigger you're talking about
7 where the formal request from NRC management to the industry to
8 do something has to take place, is on this question of whether
9 you're going to take enforcement action.

10 We do a lot of voluntary guideline efforts that
11 remain voluntary; that don't get into inspection and
12 enforcement, where the interactions with the staff are healthy.

13 MR. SHERON: There is going to be no inspection
14 before the process works through. For example, let me give you
15 an example, okay?

16 The way I envision it is, okay, the staff gets a
17 concern like the Varge issue, let's take that one, okay?

18 First off, we raised it and we gave you heads-up at
19 the meeting, okay? If you guys want to have a meeting on it,
20 okay, before we send out a letter to you asking you to take it
21 on, that's fine; we'll be glad to do that, okay?

22 But, you know, whether we have the meeting or not,
23 okay, we would send you a letter, basically asking you to take
24 this on as an initiative.

25 Now, how you respond is kind of your business, okay?

1 You could say either, no, we disagree with you; or yes, we'll
2 take it on; or, gee, we don't think that this is something
3 that's appropriate for NEI to do. Okay, you need to deal with
4 owners groups or you need to deal with individual utilities or
5 something like that, whatever it is.

6 At this point, there's still nothing with
7 enforcement, okay, at this point. Now, if you come back and
8 tell us to pound sand or something, all right, then we've got
9 to scratch our head and say, gee, do we want to continue to
10 pursue this or what, okay?

11 You'll obviously give us your arguments, why you
12 either don't think it's an issue, okay, and the like. If we
13 agree with you, we'll go, gee, yes, we didn't think of that;
14 that's right. The matter is dead; we'll drop it, okay?

15 If after we read your letter we don't agree with your
16 assessment, okay, then our next step is to go, let's say, with
17 a Generic Letter.

18 That Generic Letter then goes through a process that
19 includes the EDO Office, as well as the Commission, okay?

20 So there's -- and the CRGR and possibly the ACRS, so
21 it's a very, very formal review process that gets it before
22 that letter ever comes out in final form. Because, remember,
23 even when we do the Generic Letter, okay, unless it's something
24 that is of super high priority, okay, it's going to come out
25 for public comment anyway, and you're going to get a shot at

1 it, all right?

2 And most likely there's going to be nothing with
3 enforcement until it's a done deal, okay, until we finally
4 decide to go out formally with the letter, okay?

5 At which point then, okay, I think there's been ample
6 communication.

7 MR. HERMAN: I think we need to say something a
8 little more about the enforcement issue. And as to the word,
9 discussions, again on enforcement at the last meeting, and what
10 the scope of things might be, one of the things that was said
11 at the last meeting -- and, Bill jump in -- we've discussed
12 this before with our inspection people.

13 And we've discussed it with OGC and OE, in terms of
14 what falls where in terms of enforcement. And the
15 understanding that we have after talking with the legal staff
16 -- and, Gene, correct me if I get it screwed up because I don't
17 know it that well -- if something gets adopted into an Appendix
18 B type of program, that's what I'll call business as usual type
19 of enforcement.

20 If a licensee adopts something in an Appendix B
21 program, to handle inspections, evaluations, and they become
22 procedure types of things that are in an Appendix B program,
23 they're subject to the normal Appendix B program.

24 NEI agreed with that the last meeting, the both of
25 the owners that were running the voluntary group, Mike Tuckman

1 agreed with it, Lou Sumner agreed with it. And that's pretty
2 clear-cut.

3 Where you get into the cloudier issues, are what's
4 the enforcement base? Where are you from an enforcement
5 viewpoint? If I get into something that's outside of the
6 design basis, there's an industry commitment to do it.

7 And I think the true answer to that is what you've
8 got is a commitment to do it, and if the industry changes its
9 mind, then what you've got is a changed commitment, okay?

10 If the staff won't say anything above that, well, the
11 discussions we had with our legal staff, if we want to fish
12 rather than cut bait, then it's incumbent upon us to write an
13 order to do whatever it takes to put it into place in terms of
14 what the regulations are.

15 And I don't think it's very confusing in terms of
16 enforcement at all. I think that's the position that we're
17 going to write down, and I don't think you guys disagree with
18 that.

19 MR. MARION: No. We made the point in September that
20 the implementation of initiatives really is part of the
21 threshold in terms of inspection and enforcement, because if
22 the implementation fall within the Part 50 scope, i.e.,
23 Appendix B, then what's the issue, okay?

24 MR. COLLINS: It shouldn't be called a voluntary
25 program.

1 MR. MARION: Right, once the licensee decides to
2 implement it. But the fact is that elements of an initiative
3 may fall within that scope while other portions of an
4 initiative may not, okay?

5 But that's why it's really important to have these
6 kinds of discussions so we understand what is and what isn't
7 within the regulatory scope.

8 And we found, once we get that understanding, the
9 rest is easy.

10 MR. HERMAN: But, again, what the original title of
11 VSI-13 was this piece of it. It originally -- it's now the Use
12 of Industry Voluntary Initiatives in the Regulatory Process.

13 It used to be Voluntary Initiatives in Lieu of
14 Regulatory Actions. And I think if you're in lieu of
15 regulatory actions, that type of definition, then it's pretty
16 clear, you know, what's the Appendix B stuff.

17 You're developing the program, but it's basically
18 still that when you're done with it, it's an Appendix B-type
19 commitment.

20 MR. VINE: Let me ask you a hypothetical question
21 about this Appendix B example: Let's say we have an issue that
22 NRC is concerned about and industry is concerned about because
23 it has some impact on performance?

24 But it doesn't meet the criteria. You know, you
25 can't show that there's a clear compliance case; you can't show

1 cost/benefit improvement. But the industry is still interested
2 in dealing with the issue because it has some performance
3 implications.

4 So the industry takes it on as a voluntary industry
5 initiative, even though it doesn't meet the backfit rule. What
6 incentive -- and they go through it, wide industry
7 participation and so forth.

8 What incentive would the industry have in putting it
9 in an Appendix B program if that gets them into enforcement
10 space when, in fact, it's being handled properly as an
11 industrywide initiative without putting it in an Appendix B
12 program?

13 MR. HERMAN: I don't know what the threshold of it
14 is.

15 MR. SHERON: There's no requirement that it be an
16 Appendix B, period.

17 MR. COLLINS: But that's one of the understandings to
18 establish on the front end.

19 MR. HERMAN: There were different bins of
20 commitments. We used a different example.

21 I think the one we used was something related to
22 badging. Did the industry want to do something relative to
23 badging to make people get onsite, off and on.

24 And our discussion was that they can put that in
25 place; it's the industry's program, they do what they want. If

1 they want to talk to us and get some input on it, fine, but
2 it's their program.

3 I wouldn't even say that there would necessarily be a
4 commitment associated with a program like that.

5 MR. MARION: You brought up the point, Bob, about the
6 change in title of this effort. Could you go over that again,
7 please? Could you go over what it's being called now as
8 opposed to --

9 MR. HERMAN: It's what's on the Commission paper.
10 It's the Use by Industry of Voluntary Initiatives in the
11 Regulatory Process.

12 MR. MARION: Okay.

13 So we're no longer considering it as an appropriate
14 substitute for regulatory action? One of the things that I
15 wanted to talk about was the perception of that terminology.

16 MR. HERMAN: It can be. I think it's -- a regulatory
17 action can be rulemaking. A regulatory action can be a Generic
18 Letter, or a regulatory action can be an information notice, or
19 whatever the new forms are that we've got out there.

20 There is still a broad -- or it might be having a
21 meeting with somebody. Well, not having a meeting, but I think
22 this is just supposed to be broad to cover the waterfront.

23 MR. CARPENTER: Specifically what we said in SECY
24 99-063, is that the staff has concluded that the current
25 regulatory framework does not preclude implementation of

1 voluntary industry initiatives, and that such initiatives,
2 except in cases where adequate protection is concerned, can be
3 accepted in lieu of, or complementary to regulatory actions.

4 MR. HERMAN: And an example outside of that was, I
5 think, a good example was -- I'm trying to think of one. We
6 developed a Reg Guide and NEI really provided a guideline
7 document for the Reg Guide.

8 MR. MARION: Implementation, station blackout. I
9 mean, there was a whole slew of them.

10 MR. HERMAN: Depending on what the item is.

11 MR. COLLINS: I don't see those as voluntary. If
12 there's a rule out there that says you've got to do something,
13 I don't see that as voluntary. I see that as an industry
14 program, I don't see that as a voluntary initiative.

15 Let me describe what I see as truly a voluntary
16 initiative: A couple of years ago, we had a shutdown rule
17 proposed.

18 The staff went through the entire backfit analysis,
19 okay? And they concluded that a cost/beneficial enhancement
20 was clearly justified by the analysis, okay?

21 Went up to the Commission and the Commission said,
22 no, it looks like what the industry is doing is sufficient,
23 okay, to cover that.

24 So now, in effect, you've got voluntary actions by
25 the industry that are a substitute for putting that shutdown

1 rule in place, okay?

2 Now, when a situation like that comes up again,
3 what's the incentive for the staff not to put in place, that
4 rule?

5 You're asking what's the incentive for putting
6 something under an Appendix B program, what's the staff's
7 incentive for not going forward with a rule?

8 They've gone through the backfit analysis that says
9 it's cost/beneficial, but the industry says it's not an
10 adequate protection issue, it's cost/beneficial and we'll put
11 in place, a program instead of that rule, okay?

12 Now, what's our incentive when we don't have any
13 enforcement tools now because there's not a rule out there?
14 What do we do in the oversight process? What do we do in the
15 --

16 You know, the Commission told us in the SRM on the
17 shutdown rule, monitor through inspection and other means. And
18 that, to me, put this type of meeting together.

19 It's like how do we do that? Right? The industry is
20 saying, we're going to step forward and take care of all of
21 these issues; you don't need to put the rule forward, okay?

22 So we says, okay, we'll let you do that, but now
23 where are we in monitoring, enforcement, oversight space?

24 MR. HERMAN: We discussed that with Bill Dean
25 earlier, okay? And one of the things that we said is that the

1 inspection activities that are going to go out there are going
2 to be part of the new inspection program.

3 And the new inspection program can look at things
4 that are within the rules or outside of the rules in terms of
5 risk significance. And if somebody went out and looked at a
6 shutdown risk program at a plant, and decided that what was
7 being done was a program that wasn't addressing the issue, and
8 there was a question of risk, it could be brought back here.

9 The action would be --

10 MR. SHERON: What would happen is that they would
11 come back and, you know, the Commission says do it by
12 inspection or other means, which could be monitoring, all
13 right?

14 Now, if the inspectors come back and say, hey, you
15 know, gee, the industry said they were doing all these
16 wonderful things during shutdown, and they're not doing it,
17 okay?

18 I'd be the first one to sit down and say, okay, let's
19 send back up the Commission paper and tell the Commission, Dear
20 Commission, remember all those wonderful things that the
21 industry said they were doing voluntarily? They're not, okay?

22 Therefore, we recommend that you implement this rule.
23 Okay? That's how we would proceed? Okay?

24 It's the same thing, okay? Now, if we found that
25 there was something going on out there that was flagrantly

1 violating the regulations, that might be an inspection issue
2 and enforcement, all right?

3 But if it's something where we don't have a
4 regulation in place, okay, but we're relying on a voluntary
5 industry initiative, and we find out that the industry isn't
6 true to their word in doing it, then we go back to the
7 Commission and say, hey, guess what? These guys lied to you.
8 All right?

9 And then we take the appropriate regulatory action,
10 which may be a rule.

11 MR. COLLINS: I think everybody recognizes that's not
12 the cycle we want to go into.

13 MR. SHERON: Exactly.

14 MR. COLLINS: I'm asking, what can you guys do to
15 assure us that we don't get into that cycle?

16 MR. MARION: I think the shutdown is a good example.
17 Having been involved in it in the first cycle when it went to
18 the Commission, I didn't appreciate the philosophy of
19 substitution which is still problematic to me.

20 I think that as I recall, the arguments that industry
21 was using, or the basis that industry was using was
22 performance. Bob mentioned shutdown risk management programs.
23 I submit that's the wrong place to look.

24 Anything somebody puts together in terms of a
25 guideline, whether it's EPRI's -- and EPRI had a piece in that

1 particular effort to support the industry; we had a piece at
2 NEI, and INPO had a piece.

3 None of those documents were developed for purposes
4 of being used during inspection activities. That is a separate
5 question that we need to talk about and resolve in the future.

6 And the thinking was, look at the results in terms of
7 the events that hopefully would not occur while a plant is in a
8 shutdown condition. We think that over the years that kind of
9 speaks for itself.

10 And compare it to what it was like when this was
11 first brought up. There has been significant improvement.

12 If this is an area that warrants further discussion,
13 maybe we need to talk about it in the future. But right now,
14 our observation is that the process within the NRC played out,
15 and the decision was made not to pursue regulatory action.

16 And this came up at our meeting in September. I
17 forget, but one of the NRC staff people brought it up, and I
18 said, well, help me understand why is it still an issue within
19 the NRC staff if the decision was made not to proceed?

20 Is there something that we don't understand?

21 MR. COLLINS: It's the SRM because the staff is
22 supposed to monitor through inspection and other means.

23 MR. MARION: Okay.

24 MR. COLLINS: That's why for the staff it's still an
25 issue. How do we do that? I thought that's what this -- a big

1 part of this -- when I say voluntary initiative, that's the
2 only voluntary one I'm hearing.

3 The other ones I hear are all compliance. You're
4 undertaking a program to me that's a specific regulatory
5 requirement. In this case, the regulatory requirement was not
6 put in place specifically because of the credit we gave you for
7 those actions.

8 MR. HERMAN: But I think there's a difference, okay?

9 MR. COLLINS: There's a big difference.

10 MR. HERMAN: There is a difference in the programs,
11 but I don't think you can characterize the first one as a
12 voluntary program, too, because they're writing the rules of
13 what the program would be that they want to implement, rather
14 than us handing them a generic letter and specifying what we
15 wanted done in the program.

16 To me, that's a big difference.

17 MR. COLLINS: Ultimately there's a requirement that's
18 got to be met that's on the books. In the case of shutdown,
19 the requirement was not put there specifically.

20 MR. HERMAN: We said there's definitely two different
21 ones. But, I mean, one of the things that came down in the
22 Commission guidance was a discussion about guidance should
23 address how plants that don't fully commit to a particular
24 voluntary initiative, they're not subject to related
25 enforcement action will be handled.

1 So that's part of the things that we've been asked to
2 develop by the Commission. It's in the SRM.

3 MR. MARION: One of the suggestions that I was going
4 to make a little bit later on in our discussion is that as we
5 move forward and thrash out this process and reach these
6 understandings, maybe what we need to do is ask the Commission
7 to take a good, hard look at what's being proposed.

8 I submit that, you know, you have a new set of
9 Commissioners involved now than you had when this decision was
10 made, et cetera, and the thinking and expectations on their
11 part may be entirely different.

12 But I offer that just for your consideration.

13 MR. HERMAN: The process for the paper, Alex, that
14 we've go right now is, we're supposed to get it upstairs in May
15 to the Commission.

16 MR. MARION: Right.

17 MR. HERMAN: They're supposed to come back with an
18 SRM on it. What we're planning to do and what we said all
19 along is, what we'd like to do is, and what we're probably
20 going to ask the Commission as part of the paper, is that we'd
21 like to get your view, get the SRM, and then what we'd like to
22 do is have a public meeting before implementation.

23 Mike Tuckman suggested that at the last meeting, and
24 thought that was a good idea.

25 MR. MARION: Okay.

1 MR. VINE: Can I address Tim's example and move it
2 back to Brian's comment, too, about the industry lying to you
3 about committing to something and not doing it.

4 MR. SHERON: I didn't.

5 MR. VINE: Or whatever. The reality is that in the
6 way most of these scenarios will play out there will be
7 extensive dialogue between the industry and the staff on what
8 exactly the technical solution should be.

9 So, when the industry commits to something, you will
10 have already agreed that in principle, if you do that, it's
11 good enough.

12 And what will likely happen if you find that some
13 utilities aren't measuring up, is that it's down into the level
14 of interpretation of -- I met the intent of this, but not the
15 letter of the law of this, and those kinds of questions that
16 always come up.

17 And those have to be worked out on an individual
18 plant basis, if there are disagreements on what was intended.

19 It's very clear that utilities don't want EPRI, NEI,
20 or INPO getting into the process of enforcing regulatory
21 matters. They believe that we ought to be helping developing
22 the guidance, and when it comes to matters of compliance, those
23 are really up to the NRC.

24 The other point I wanted to make was that was we talk
25 to executives about this issue, take the example of the

1 shutdown rule: There are some utility executives who would say
2 it is sufficient if the case has clearly been made that there's
3 a rulemaking that's justifiable in the case that you cited,
4 that it's sufficient for the industry to develop that program,
5 get it accepted, and then make commitments on individual
6 dockets and by that means commit the industry to something that
7 you could enforce.

8 There are other utilities who say, no. The only
9 acceptable process, even if the industry assists in defining an
10 adequate program, to get to enforcement space, you must have a
11 regulatory basis for that.

12 And it has to -- you have to go through the
13 rulemaking process, even if -- and that rulemaking process
14 might be pro forma. It might just simply be something that
15 endorses the industry initiative as a means of addressing the
16 problem, but you have to go through that formal process.

17 MR. SHERON: I'll give you an example: Severe
18 accident procedures, there's no regulatory requirement for it.
19 The industry voluntary said, we will do that.

20 We said fine, we will kind of monitor and watch and
21 see if they're doing it, okay?

22 And presuming that they're all doing it in an
23 acceptable manner, okay, then that's good, we don't need to
24 promulgate a regulation. Nobody's going to come out and
25 inspect, and if they don't find some procedure at a plant, is

1 going to run around and pull out the ticket book and start
2 writing a ticket, okay?

3 They're going to come back and say, guess what we
4 didn't find at such and such a plant? And if we get too many
5 of those, we're going to go, gee, the industry said they were
6 going to do this, but they really didn't do a good job, and
7 then we'll have to decide, do we need to do something more in
8 regulatory space like promulgate a rule, for example, all
9 right?

10 But that's an example of something that is not a
11 requirement. It was an industry initiative, okay, and we're
12 monitoring it, okay?

13 This is as opposed to if the industry comes in, if we
14 raise an issue of compliance, all right? We've got some new
15 information and we don't think you're complying, for example,
16 steam generators, okay? All right?

17 If somebody is out there inspecting the bobbin coil,
18 all right, and you know darn well that thing ain't going to
19 pick up circumferential cracks, all right?

20 You know, yes, you may cite them against Appendix B,
21 all right, because they're not using the appropriate methods,
22 all right?

23 MR. HERMAN: Inadequate procedures.

24 MR. SHERON: Yes, and the like. And even though that
25 might be voluntary in the sense that, no, I don't need a rule

1 that says thou shalt use such and such a type probe or
2 whatever, but it may be a voluntary initiative that follows an
3 NEI guideline, all right?

4 If they're not following it, okay, and we don't think
5 that it meets Appendix B, that may be something that we would
6 cite.

7 MR. HERMAN: The other piece of it is, let's say you
8 have a voluntary program like Brian was describing, outside of
9 the regs and the area Tim's talking about, and a licensee says
10 it's committed to do it, and then says I don't want to do it
11 anymore and take its commitment away for that issue?

12 At that point, there is guidance in terms of what you
13 do in terms of the backfitting. There was a Commission paper
14 that went up following this one that says that if you want to
15 look at things again from a backfit perspective in terms of
16 whether you want to go forth with rulemaking or whatever, if it
17 justifies it, that there's a position that just came down.

18 I don't remember the SRM number, but how much credit
19 you have to give for voluntary actions if somebody changes from
20 those actions. It was the paper up from Research. It came
21 back with an SRM and they re-described the process again.

22 That's also out there, and we're going to incorporate
23 that. It was part of an SRM.

24 MR. MARION: You're talking about crediting a
25 regulatory analysis?

1 MR. HERMAN: Yes.

2 MR. MARION: Okay, all right.

3 MR. COLLINS: Let me ask a question, though. Say the
4 inspection people are out and they're monitoring an activity
5 like shutdown where we decided not to put regulation in place.

6 And they conclude that the licensee X is not
7 following the type of guidance that we thought was in place.

8 Do you think it's appropriate for him to write in a
9 formal NRC inspection report, the discussion of that issue? Is
10 that the appropriate place?

11 MR. MARION: I don't think that's a fair question. I
12 would go back and ask the question, why is the inspector
13 looking this area, given that the decision was made by the
14 Commission, not to pursue regulatory action? I understand the
15 point.

16 MR. COLLINS: They'll go monitor by inspection and
17 other means.

18 MR. MARION: I think -- how can we understand what
19 your expectations are relative to monitoring industry
20 activities in this area? Maybe that's the thing that needs to
21 be discussed.

22 MR. DEAN: Let me weigh in a little bit about the
23 inspection program and where it comes from in terms of a
24 shutdown. We have developed a specific inspection procedure on
25 shutdown activities which embody a number of the concepts that

1 were contained in the NUMARC guidance that we endorsed and that
2 the Commission recognized as being something that would enhance
3 performance in this area and thus we didn't need rulemaking.

4 And they told the staff to go and monitor that.

5 We would take issue that we would find looking at
6 shutdown activities, and we would process them through the
7 significant determination process, and ascertain what the
8 significance is.

9 And the end result may or may not be that there is a
10 violation. But if it's not a regulatory requirement, then it's
11 judged on the merits of its significance and not on the merits
12 of whether it's necessary an initiative that the industry said
13 they would do or a regulatory requirement or whatever.

14 We look at the significance of the issue.

15 MR. COLLINS: That would be written up in an
16 inspection report?

17 MR. DEAN: That would be written up in an inspection
18 report.

19 MR. SHERON: That makes a lot of sense.

20 MR. MARION: That makes a lot of sense, but I would
21 still -- I hope I don't get in trouble for saying this, but if
22 direction comes from above that makes the job difficult, I hope
23 you look for ways to try to get that clarified or something.

24 If you don't have an understanding of what the
25 expectations are from the Commission, it makes it more

1 challenging for us to have an understanding, whereas the NRC is
2 the organization that it's coming from, if there is a
3 disconnect of some sort.

4 MR. HERMAN: One of the things that we did say at the
5 last meeting was that the enforcement and the inspection on
6 this was going to be consistent with the new Commission policy
7 on doing inspections, and it was going to be basically the
8 risk-significant policy that's this thick and just went out.

9 MR. MARION: All right. Before we go on to other
10 topics, let me just make one point very clear. Our executives
11 don't want -- I can tell you this from a standpoint of NEI
12 activity in this particular area -- their expectation of us is
13 not to become an extension of the NRC. They have no problem in
14 us reaching an understanding on how we can do something to
15 complement NRC's activities.

16 Historically it has been shown that rulemaking is a
17 great catalyst for bringing the industry and the NRC together,
18 okay? -- and we come together under rulemaking issues, which
19 are relatively straightforward. Everybody has an understanding
20 what we are trying to do and they are easy to address, but it
21 is all these other things that take more time and I like the
22 point about open, frequent dialogue and I think we just agree
23 from our perspective we will commit to you to have open,
24 frequent dialogue on these issues in the future, but we are
25 very focused on the concept of complementary action on our part

1 as opposed to a substitute for regulatory action on the part of
2 the NRC.

3 One reason is the public perception that an industry
4 organization or some element of the industry is doing something
5 that the NRC cannot do otherwise. Whether it is true or not,
6 it is the perception and I just feel obligated to bring that up
7 because it works against -- once that perception is out there
8 in the public it creates problems not only for the NRC but also
9 for the industry, so I am suggesting we need to be very careful
10 about these interactions in the future.

11 MR. VINE: Well, it could be a false impression about
12 you abdicating role here that you shouldn't be abdicating.

13 MR. MARION: We are real sensitive to that. That's
14 why the number of times we said, well, if you have done a
15 regulatory analysis and have a basis for a decision then go
16 forward with the decision. That was never meant to be
17 confrontational, but it was meant to be if you have already
18 decided that you have to do something, then don't let us --

19 MR. SHERON: We did that, for example, on the
20 charcoal filter testing.

21 MR. MARION: Right.

22 MR. SHERON: We decided we needed to issue that
23 letter.

24 MR. MARION: Right.

25 MR. SHERON: There may be issues in the future where

1 for example if we think there's a compliance problem a lot of
2 times when we issue a generic letter we will ask you to say
3 what you are doing -- you know, while you are solving, figuring
4 how to deal with the issue, we may use words like if you agree
5 with us, what are you doing in the interim to bring yourself
6 into compliance? And it could be a number of things you could
7 put.

8 For example, if it is in fire protection, you could
9 put temporary fire watches or something -- some compensatory
10 measure. That's fine.

11 Now if we bring the issue to you in the form of a
12 letter, it is not a generic letter. It doesn't say you must
13 answer by such and such a date, but if we send you a letter
14 that says here's the issue, all we are doing is we are trying
15 to get away from being prescriptive, all right, by saying you
16 must answer this, you must answer it in 60 days, you must tell
17 us what you are doing to bring it -- blah blah blah blah
18 blah -- you know, the whole drill.

19 Without being very prescriptive, the voluntary
20 initiative is we have got a problem. You understand what our
21 technical and our regulatory concern is. Now can the industry
22 come forward and propose something, all right, that addresses
23 this issue, and the Staff is willing to look at it and work
24 with you, as opposed to in a very prescriptive sense writing
25 this letter which hits you over the head.

1 That is all it is. It is saying in essence -- in the
2 old days we would have sent you a generic letter, no questions
3 asked, but now we are going to send you a letter which says
4 here is the issue, we would like you to come to us and tell us
5 how you would like to address it, how you think you should
6 address it properly, and let us not be the ones that are
7 prescriptive that say answer this in 30 days or 60 days and
8 tell us this and that and the other things.

9 That is really the way I envision it.

10 MR. HERMAN: Again, in the SRM though the directions
11 are as the Staff develops guidelines it should not
12 underestimate the importance of public confidence. It must be
13 clear to the public that substituting voluntary initiatives for
14 NRC regulatory action can provide effective and efficient
15 resolution of issues and will be controlled and monitored so as
16 to ensure plant safety is not compromised and doesn't represent
17 a reduction in NRC's commitment to safety and sound regulation.

18 So we have got to address that part of going back to
19 the Commission with a paper. The other piece of that, there
20 are a couple of things that do come up as questions when you do
21 that. There certainly is a question of noticing and of public
22 participation.

23 One of the things is if we are going to put out a
24 generic letter, we would have given the public an opportunity
25 to comment when it is noticed. I think we are going to have to

1 propose something that gets some kind of public participation
2 in the process. The other thing --

3 MR. SHERON: Maybe your response, the program you
4 propose in response to, say, a letter asking for a voluntary
5 initiative. We put that out for public comment and say here is
6 the issue, here is what the industry proposed, does anybody
7 have any comments on it.

8 MR. HERMAN: The other thing that turns out to be
9 difficult in terms of giving the public sufficient information
10 to be able to make a judgment about what is going on, and one
11 of the things that we ran into the VIP program early-on when we
12 were doing that is a lot of the things are paid for by the
13 industry and there's value in what they are doing and they are
14 proprietary.

15 Getting the right balance in a proprietary and a
16 nonproprietary document to provide sufficient information to be
17 able to let the public participate in the process by maybe not
18 seeing everything that is being paid for to develop something
19 but enough to know what is going on, and that came up with
20 license, using the VIP documents for the license renewal.
21 There had to be a rewrite to expand some of that to put it in
22 the process and to allow participation so it is not easy.

23 MR. MARION: I think that is a very important element
24 of this but I would suggest that there be focused concentration
25 on ensuring that the public understands NRC's regulatory

1 decision-making. You have got to start there, and then the
2 details of what documents are used to form the basis for those
3 decisions are a separate issue but the process is the kind of
4 thing that we are trying to get an understanding on ourselves
5 relative to this particular topic.

6 MR. SHERON: You know, as part of your response to a
7 voluntary initiative, you may have to -- for example, if you
8 agree there is a concern that needs to be investigated, you may
9 have to propose some interim actions. Each licensee has agreed
10 to do the following -- for example, post a fire watch or do
11 some extra inspections or something in the interim until we
12 resolve the issue.

13 This is the same kind of thing that we would probably
14 go after in a generic letter -- but you may have some better
15 insights that say, well, only certain plants need to do that or
16 something, okay? But that still allows us to sit down and say,
17 yes, the licensees still comply with the regulations because
18 they have agreed to the following in the interim, but that is
19 voluntary.

20 MR. MODEEN: I want to come back to something I think
21 Tim raised that is kind of interesting. You used two
22 examples -- what really is a voluntary initiative and, first,
23 take steam generators, for instance where -- and obviously we
24 have been in a lot of places since 1993 -- but ultimately the
25 industry two years ago decided that based on everything we

1 learned through that interaction that, gee, we needed to what
2 we needed to do from a standpoint of what was put forth in NEI
3 97-06 and move forward with that, continue the regulatory
4 interaction, but meanwhile we thought we needed a certain level
5 of performance, et cetera, at the plants, then we continued the
6 dialogue.

7 That was a voluntary initiative -- in my mind -- that
8 we committed to each other, the utilities, but not specifically
9 to the Staff at that time, but to inform the Staff that we took
10 that action.

11 I think as Tim was indicating, okay, that is a VII
12 there.

13 Then we continued the process, recognizing though
14 that the tangents to specific compliance issues, regulatory
15 requirements of things -- for instance, many people's tech
16 specs said you could get by with -- or not get by but you could
17 have a 500 gallon per day leakage in a steam generator. Well,
18 we were holding ourselves to 150 GPD -- the right thing to do.

19 Ultimately we came to the conclusion that, hey, a
20 license change back incentive -- we ought to reflect it in the
21 licensing basis of each of these plants to have that tighter
22 thing and we are moving forward with the Staff on that.

23 At the point that we execute that, assuming we get
24 the package in and get agreement, et cetera, I would tend to
25 agree with Tim that, gee, that is no longer a VII. I mean we

1 are really saying, hey, guys, everybody's got to change their
2 licensing basis, and it makes it much clearer again, these
3 follow-on activities, the inspection activities, the
4 enforcement activities.

5 I think the thing that kicked off GSI-13 and the SECY
6 that you then put forward is really a recognition that, hey,
7 instead of these false starts on throw out a draft generic
8 letter until you get a ton of comments back that put us back in
9 a do-loop and then we really start the hard dialogue. We are
10 looking for process and we have done a lot better I think the
11 last three, four years to have that process early on and
12 perhaps, as I think Tim had maybe suggested, this VII thing
13 unless we really get it nailed down as to when it is a VII and
14 when does it transition to something else like is there a need
15 for regulatory action or the nexus to that regulatory action,
16 we might avoid some of our concerns where we think we are kind
17 of going around the backfit at times and other playing loose
18 with it.

19 MR. SHERON: A lot of this VII was in response to the
20 industry complaints.

21 MR. MODEEN: Oh, yes, and we are not here saying that
22 a lot of the dialogue and the early communication, the
23 opportunity to propose things, is bad. I mean we appreciate
24 that. We are spending a lot of resources on it, but we are
25 still tripping over implementation at the licensee -- I'm

1 sorry, I just wanted to contrast that with another example.

2 For instance, in fire protection, where I'm working
3 and circuit failures, you know, it really was very evidence
4 through the early part of '97 and what we thought was very
5 clear direction from the Staff and guidance in SERs, et cetera,
6 that, gee, compliance looked like "x" -- and it was also just
7 as clear to the Staff that compliance looks like "y" and so we
8 got to the point and agree I think last summer through that
9 workshop that, okay, let's set that aside and say what is the
10 significance of this issue? Let's work through that based on
11 risk. Let's get better technical data, et cetera, and let's
12 figure out the right. We are still working through that.

13 But then just yesterday we had a meeting on this. It
14 was real clear again that there's many in the Staff that think
15 because we said we would work through this with the Staff and
16 have that dialogue that we have already say, yes, we agree,
17 there is a real safety issue here and something has got to be
18 done and ultimately -- and, gee, when are you going to get it
19 finished?

20 It is like, well, now wait a sec, we are still in the
21 VII part that kind of says let's have the dialogue, let's
22 figure out what the right thing to do is, see if we can come to
23 agreement, and if we can, great -- if we can't, well, then
24 obviously you have your process and we deal with it
25 accordingly.

1 MR. HERMAN: But when you are talking about generic
2 letters, I guess to me a generic letter is not a rule. A
3 generic letter in and by itself is not an enforceable document.
4 If we go out with something under 50.54(f) and we get an
5 inadequate answer, then again the onus is on the NRC to come up
6 with what is a legal action which is to write an order or take
7 other actions, so from that perspective when there is really
8 not that much of a difference I don't think between a licensee
9 doing something, say under a VIP program and responding to a
10 generic letter, the main difference to it is the front end of
11 the program where the licensee has his destiny in his own hands
12 or the industry does in terms of providing input on what goes
13 into the program there that they want to institute.

14 Okay -- I think in either case the NRC has the option
15 to look at it and say is it adequate in terms of meeting the
16 safety regulations and if it doesn't, you know, the avenue is
17 always open in terms of further actions.

18 I don't see that there is that big a difference.

19 MR. MARION: Let me ask a question. If the issue is
20 one of compliance with the regulations, why should the action
21 be voluntary?

22 MR. STROSNIDER: I think part of what we keep missing
23 here is these are voluntary industry initiatives in lieu of
24 regulatory action.

25 MR. HERMAN: In some case. Some may not.

1 MR. STROSNIDER: In some cases, but in the issue of
2 there's a compliance issue, the NRC can certainly take
3 regulatory action. If nothing else, we could take enforcement,
4 but if there is a generic concern, for example, does it make
5 sense to start going off and citing one plant at a time, or do
6 you go off and say, look, we think there is a compliance issue
7 here and can the industry address this issue without us having
8 to go off and take some other action, as in the generic letter
9 of something like that.

10 MR. RECKLEY: Another thing to consider is compliance
11 is not always worth, not even rarely, black and white.

12 MR. STROSNIDER: That's my point.

13 MR. RECKLEY: The means of compliance might warrant a
14 voluntary industry initiative in lieu of a Regulatory Guide or
15 some other action, and the efficiency gained from the Staff and
16 the industry agreeing on the means of compliance is still
17 justified in the use of the term voluntary industry initiative.

18 MR. SHERON: The whole idea, Alex, was to respond to
19 the industry's concerns about generic letters. If you guys
20 don't want to take it on as a voluntary industry initiative,
21 then the next step in the process is generic letter.

22 I mean the Staff has to address its concerns. We
23 just can't raise a concern and then just let it drop or
24 something, okay? But the idea was if the industry wants to
25 basically be able to control its destiny a little better

1 without getting hit over the head with a hammer called the
2 50.54(f) letter that says do this, this, this, this in this
3 order and everything, but rather go off, study the issue, come
4 back, and say give us what you believe is the best way to
5 address the issue, and that's fine. We are giving you that
6 opportunity.

7 All I can say is if you don't want to avail yourself
8 of it, we just dig into the toolbox and get the next biggest
9 hammer.

10 MR. MARION: I would just offer we'd like the
11 opportunity to discuss these issues with you in the future --

12 MR. SHERON: We would be willing to do that. We will
13 give you a heads-up before we intend to engage you with any
14 voluntary industry initiative proposals.

15 If you want to have a meeting beforehand, to better
16 understand what the issue is and the like, we will be willing
17 to do that and the like and get your insight on it.

18 MR. MARION: Now generic communications have come up
19 a number of times and I touched on this earlier.

20 We sent in comments to the proposed generic
21 communication process that is right now in effect, and if you
22 will look at those comments from the standpoint of
23 understanding the process and what the expectation is when
24 these communication products are issued, those are the same
25 kind of questions and issues we have with this, so we need to

1 come to grips with this in terms of NRC expectations how this
2 plays out in inspection/enforcement space, et cetera, but it
3 all comes down to what is the regulatory requirement, the
4 explicit regulatory requirement, what is the problem.

5 Once we get through that, then it becomes very clear
6 what NRC's role may be or what industry's role may be, but we
7 need to create that dialogue and continue with that.

8 One example I would like to bring up to just kind of
9 facilitate some thinking about the process is air-operated
10 valves.

11 David and his folks have been meeting with the NRC
12 for some time and the NRC approached the Owners Groups to
13 develop something to deal with NRC's concerns relative to AOV
14 performance and the Owners Group did that, and the product that
15 was developed by the JOG was brought to NEI for possible action
16 that could range from doing nothing with it or making it part
17 of a formal industry initiative and anything you could mention
18 in between.

19 We looked at that and had some discussions, a lot of
20 discussions, with the Owners Groups as well as with INPO and
21 concluded it made a lot more sense for this thing to be picked
22 up by INPO. That apparently created some consternation on the
23 part of the Owners Groups as well as I believe on the part of
24 the NRC Staff.

25 NRC Staff still thinks that something more needs to

1 be done

2 MR. MODEEN: They are looking for the commitment --

3 MR. STROSNIDER: Just to fill in that little gap,
4 okay, when there was a GSI on this issue we went to ACRS and
5 closed this GSI. Part of the logic for the closure referenced
6 the AOV JOG program and that it was going to address some of
7 the technical issues in the GSI, so ACRS said, fine, go close
8 it with that understanding.

9 MR. MODEEN: And then why was the second letter -- I
10 mean the first letter for closing the GSI didn't, hopefully
11 didn't say any words about the industry committing to a job
12 program doctrine that the industry hadn't committed to.

13 MR. STROSNIDER: I am not sure. I would have to look
14 at the letter, but the presentation and the understanding from
15 what I understand from a discussion with ACRS was, yes, we
16 understand that there are some issues here that need to be
17 developed. The Staff has confidence they are being addressed
18 because of the industry initiative in the AOV program. That
19 was addressing some of these issues.

20 Now how that was articulated, how well that was
21 articulated in the close-out letter I would have to go look at
22 it, but that is part of what is driving that.

23 MR. COLACCINO: The thing about that, and you're
24 right, in the first close-out the letter back to the Staff on
25 May 14th, that that was not articulated, but in a July -- what

1 also is happening this time was the first public meeting, which
2 was on June 3rd, I believe, between -- the NEI public meeting
3 presenting to the public the JOG program document.

4 At the time of the June 3rd meeting the status of
5 whether the program would be implemented, put forth as a
6 voluntary industry initiative, was not decided at that point.
7 NEI had said that we did not know -- we were still deciding
8 what that was going to be.

9 The second letter from the Staff came out on July 2nd
10 and so at that time we said -- the Staff said that they were
11 working with the industry, they had this program that they were
12 working on. They also referenced ASME work and then it was not
13 until -- so the Staff sent that out. They didn't say
14 specifically that the industry was going to undertake it, but
15 they did say that we were going to work with the industry and
16 if the industry didn't take adequate action then the NRC would
17 take regulatory action as appropriate.

18 That was on July 19th. NEI sent a copy of the
19 program to the NRC saying -- and that was the further
20 discussion that it would not be undertaken as an industry
21 initiative.

22 MR. HERMAN: This is a perfectly good example of I
23 think why we need uniformity in the process for putting generic
24 letters in place.

25 MR. MARION: Absolutely.

1 MR. MODEEN: I'm sorry I brought it up. I'm sorry --
2 I've got to add one thing to Joe's comment though that is very
3 important, because I am the one that made the closing remarks
4 on June 3rd and unfortunately we didn't have a transcript, but
5 I will give you my talking points.

6 We knew on June 3rd that we did not want or we were
7 not seeking regulatory credit in accordance with SECY 99-063,
8 and that was the bottom line of the wrap-up conversation there,
9 so understand the letter did not come out because we were not
10 sure at that point whether NEI would issue it, the Owners
11 Groups would issue it, or INPO, but it was very clear that we
12 weren't looking to elevate this to an initiative that we would
13 ask everyone to do.

14 MR. HERMAN: But this sure was not an emergency issue
15 and this sure was something that would have fell into the ranks
16 of the kinds of things that you might put at the plate at the
17 beginning of the year --

18 MR. MODEEN: Oh, yeah -- a perfect example. I mean
19 that's why we wanted to discuss it.

20 MR. HERMAN: I just want the context to be accurate,
21 that's all.

22 MR. MARION: The reason I brought it up was because
23 that it's an interesting example that will help us thrash out
24 the process, because the story continues.

25 ASME is developing a code case, okay? That code case

1 is going to get factored into some future edition of the code.
2 It is going to be picked up by 50.55(a) and become a regulatory
3 requirement.

4 Now we are going to argue about this thing until that
5 happens and until it is implemented, so I submit let's look at
6 this as a case study and try to figure out what can we do to
7 remove those barriers to progress in reaching a common
8 understanding of what complementary action we need to pursue
9 because the perception is NRC went to the Owners Group -- and I
10 am not being critical, let me just give you an optical
11 perception to the extent my optics are working properly -- NRC
12 went to the Owners Group to extract a commitment. They got the
13 commitment, okay? okay?

14 The Owners Groups couldn't deliver because they are
15 not set up to make commitments or do anything of that sort on
16 the part of their membership. That is in their bylaws.

17 They come to NEI and say, hey, here is the situation.
18 NRC wants us to do something with this. NEI is the right
19 organization to deal with it, et cetera,

20 We looked at it. We couldn't find the problem that
21 it was trying to solve. We said, well, wait a second. It
22 makes sense -- it's a good practice. Doesn't it kind of fit
23 into INPO's activities? So we forwarded it to INPO and INPO
24 factored that into their programs -- adequate and sufficient
25 from our perspective.

1
2 Staff is still not -- appears not to be satisfied. You got
3 this ASME code case process that is playing out. There has to
4 be a better way. That is the reason I identified the example.

5 MR. STROSNIDER: There may well eventually be some
6 additional technical discussions with regard to this issue, but
7 it is an excellent example in terms of the process and what is
8 the understanding from the parties involved on how this thing
9 is going to be used and why it is important and what the Staff
10 is intending to use it for, the industry's perspective on the
11 same solutions.

12 MR. HERMAN: But I think we have to get the process
13 thing straight again, okay?

14 Number one, I think some Owners Groups do make
15 commitments on behalf of their members if it is for a single
16 item. Certainly the VIP did in terms of --

17 MR. MARION: It is not a Owners -- the industry put
18 forth a separate thing to deal with this.

19 MR. HERMAN: They chose to pick EPRI to manage it.

20 The other thing with code cases, code cases are
21 voluntary. The other thing on updating of the rules -- the
22 process that we are going to in terms at least of discussions
23 of nonmandatory updating of the rules. It seems to me that if
24 it went into the code it again would be voluntary if we get to
25 the point of saying that we are not going to be updating

1 50.55(a), so those are all voluntary actions too.

2 MR. VINE: Could I make a couple comments about the
3 AOV issue, since we are kind of beating up on it?

4 The first comment is specific to something I said at
5 the beginning of the meeting. I think one of the problems with
6 the AOV issue is we never sat down and talked about the issue
7 and its significance and we never went through the process of
8 determining is there a cost beneficial change that can be made
9 here that meets the backfit test? Is there a compliance issue
10 here?

11 We just bypassed that and went to the industry
12 working on the issue in a technical sense without ever
13 addressing upfront what should have been looked at.

14 The second comment kind of goes along with that,
15 which is kind of an EPRI perspective.

16 When we put together an advisory group on a
17 particular issue, we bring the technical experts to decide what
18 the right solution to that problem is, whether it is VIP,
19 whether it is mid-voltage circuit breakers, whether it is a
20 maintenance guide on some item that is of interest to you or of
21 interest to the utilities. We don't bring in licensing
22 experts.

23 We bring in the technical experts and virtually all
24 of these programs that are coming through EPRI and most of the
25 ones coming through the Owners Groups are being developed on

1 the basis of what is the right thing to do overall,
2 holistically, for this particular functional area or system or
3 whatever, both in terms of safety, improved performance,
4 economics. It is an integrated package of what is the right
5 thing to do that is so convincing on the merits of the effort
6 that every utility would want to do this because he is going to
7 come out better.

8 It is not just selectively looking at fixing
9 something that is of concern to the NRC, so when we put a
10 program together like that and then without licensing expertise
11 involved in its creation and writing the words right so that
12 they can be somehow used in a regulatory process, you end up in
13 a situation where we have, first of all, oftentimes created a
14 guideline document that was written from the beginning to be a
15 voluntary document and not an enforceable document.

16 Second, it was an integrated package to deal with
17 both economics and safety and everything else all together.
18 This is the cookbook, guys, on how to do it best. Then you
19 bring this into a regulatory space and you are in a situation
20 where -- how do you decide which of all of the hundreds of
21 things in this program are significant enough to safety for
22 them to be inspectable, and how many of the things in that
23 document are purely economic and should not get inspected
24 against?

25 I mean how do you decide that?

1 MR. HERMAN: I guess I would have to take a little
2 exception to your characterization.

3 There's clearly some things that EPRI put out, say
4 implementation of the Check Works programs that the Staff
5 wasn't involved in, okay? -- and the ASME wasn't involved in
6 and nobody has looked at it in terms of being an enforceable
7 document. That is certainly written as a guidance document --
8 it is written very loose, in my opinion, perhaps too loose.

9 On the other hand, if I take the VIP documents, they
10 are developed by a technical committee. They are sent to each
11 of the VIP owners for their approval before they come to the
12 Staff. They come into the Staff. We basically write an SER on
13 them as if they are a topical.

14 They go back to the owners. The owners comment on
15 what we have put in our SER and then we issue a final SER once
16 we have taken a shot at the industry comments, so I think there
17 is a broad scope of how things can be implemented, okay?

18 You can look at it upfront. Those documents for all
19 practical purposes are pretty close to Section 11 where no
20 rules exist for BWR internals.

21 MR. VINE: But they go beyond what would be required
22 to meet the regulations.

23 MR. STROSNIDER: I think you make a good point.
24 Perhaps part of the difficulty here is we agree that a lot of
25 these programs are developed -- you know, we like the technical

1 work that is going on. We like it so much we want to see
2 everybody do it.

3 I think that's what you are pointing out is, well,
4 you know, there may be some things in there --

5 MR. VINE: In enforcement space -- then we don't
6 create these things for them to be turned into enforcement
7 doctrines.

8 MR. STROSNIDER: All right, but this gets back to the
9 process, where if in fact you go off and you have an initiative
10 which is strictly to look at, from the industry perspective,
11 improving economics, efficiency, et cetera, fine. There's
12 nothing safety-related. You are going to maintain safety but
13 you are going to go make things run better.

14 MR. VINE: But that's idealistic. There's always
15 safety and economic implications --

16 MR. STROSNIDER: Sure.

17 MR. VINE: -- to all of it.

18 It depends on what drives it. If it's being driven
19 not by a safety issue, but by economics or something and it's a
20 benefit to the industry, fine. But if there's an issue in
21 there, if there's a nugget of a safety issue, something that
22 NRC does have concern with, something that is perhaps
23 enforceable or that should be regulated.

24 The process needs to identify what that is, and
25 that's what we're talking about. Your example is good from

1 that perspective. When you start off on this initiative, I
2 think what we're all talking about is let's understand the
3 scope of the initiative, understand which part of it is within
4 the regulated purview, all right, and what it's intended to
5 address.

6 And we need to have that understanding up front,
7 because I think in a lot of this the scope gets broader, and
8 the staff looks at it and says, yes, those are really good
9 things to do, and the next thing you know, well, that's part of
10 the issue we trying to address and it perhaps gets bigger and
11 then that's part of your concern.

12 So, but it's all about understanding right up front,
13 what are the issues that are going to be addressed? And if you
14 add some additional things as part of developing this program
15 because they're of benefit to the industry, fine.

16 But, you know, that's not necessarily our interest.

17 MR. VINE: When we wrote the water chemistry
18 guidelines, we did not intend for them to be regulatory
19 enforceable documents, yet they're referenced in the steam
20 generator initiative, and making that decision --

21 MR. STROSINDER: And I would just, in response to
22 that, just suggest that the industry, NEI, and EPRI might want
23 to consider, depending upon what purpose some of these things
24 are being developed for, all right, you might want to put them
25 more in the form of procedures that a plant could implement.

1 And I understand that plants want to develop their
2 own procedures. So there -- you can only go so far with it,
3 but, yes, we run into these guidelines. Bob suggests, well,
4 some of them are kind of loosely written.

5 How does it get proceduralized? Ultimately, some of
6 this stuff, when we try to credit it in regulatory space, it
7 becomes difficult because of the way it's written.

8 MR. HERMAN: But the example you just provided is
9 maybe one that's worth a little discussion, okay?

10 Environmental effects on crack growth rates are very
11 important issues. Most of the documents that have come out for
12 deciding how quick something is going to crack is related to
13 what the environmental conditions are that the component is
14 operating in.

15 You're talking about internals, you're talking about
16 piping, you're talking about the rest of it. Most of the
17 testing and most of the crack growth rates are dependent on
18 people working within the envelope of what maybe is in the
19 water chemistry guidelines.

20 So --

21 MR. VINE: I'm not saying that water chemistry should
22 be totally out of the regulations, but I'm also saying that you
23 can't take the entire document and treat it as an enforcement
24 document, either.

25 You have to look at it and selectively say what are

1 the -- what's the essence of this industry initiative or
2 guideline document or whatever it is that is essential to the
3 safety case? And there may be a half a dozen items in there
4 that are important enough to rise to that level of this the
5 piece that involves a commitment to the regulatory.

6 The rest of them are commitments within the industry
7 to each other.

8 MR. CARPENTER: If the licensee is coming and saying
9 we are using the EPRI water chemistry guidelines, and that is
10 part of our solution to this problem, then obviously that
11 brings it into the purview of what we look at.

12 MR. VINE: I would submit that we have to be very
13 careful in not setting up a process that does that, because
14 that is inviting abuse. We need to be rigorous here and set up
15 a process that allows you to selectively identify or jointly
16 selectively identify those features of an overall industry
17 program that are essential to the regulatory case.

18 MR. HERMAN: But if I were doing the crack growth
19 case that we were talking about, okay, and I was trying to
20 ensure that I was operating within the bounds of the test data
21 or within the bounds of whatever I was doing, I think the
22 people that -- your side, when you wrote the document, 14 --
23 VIFF-14 on crack growth rates or the ones to be applied to
24 other areas -- that you could specify whatever you wanted out
25 of those documents to support the crack growth rate arguments

1 and be specific.

2 If you choose to reference the documents, don't blame
3 us for it.

4 MR. VINE: I agree.

5 MR. MARION: I think the point is the documents were
6 not written with the objective of supporting inspection.

7 MR. SHERON: You need to take a first cut and
8 identify what you think are the things that are absolutely
9 necessary to say comply or meet a regulation, okay?

10 MR. MODEEN: In fact, the lesson learned on --

11 MR. SHERON: If we agree with them, then that's fine.
12 You should identify them right up in the front of that
13 document, okay? There should be some sort of a forward to the
14 document that identifies and says, you know --

15 MR. MARION: Then we'll get an NRC endorsement if we
16 did that.

17 MR. HERMAN: But this is a perfectly good example.
18 If you came in with something and we didn't like it, you'd sure
19 hear about it, either as part of RAI or part of the response in
20 the SER.

21 MR. MODEEN: In fact, the practical lesson learned
22 from field usage -- and I'm going to go back to the steam
23 generator because I think it's playing out a little further and
24 more clear, is that the underlying EPRI guidelines that
25 certainly weren't written initially thinking of some formal

1 industry initiative, they're in a two-year update cycle -- more
2 frequent if necessary.

3 Several of those that are now in the update cycle,
4 secondary water chemistry, I think is the first one that's gone
5 through that, is that we've done, the industry has done a
6 better job going back there and flagging, hey, these are the
7 key pieces relative to supporting the formal industry position,
8 making it nice and clear, and then here's this other stuff that
9 --

10 Honestly, when you know up front, as he was saying,
11 what you're trying to do with the thing, it's easier to try to
12 address that sort of thing.

13 But we've got to sort of back into some of these
14 things, because --

15 MR. STROSNIDER: We worked very hard, for example, in
16 the steam generator space to maintain the flexibility in these
17 industry-developed guidelines, and not lock it into tech specs
18 or even -- so that -- I think we worked out a solution where
19 licensees can make changes in that as things evolve on their
20 own.

21 In fact, some of our earlier documents trying to
22 address the steam generator issue, you know, we had -- I can't
23 remember if it was in the draft tech specs or in the Reg Guide
24 -- but, you know, we had tried to do, number one, you need to
25 have a water chemistry program.

1 All right, and number two, it ought to address
2 critical parameters, but we didn't try to put any specs on it,
3 we didn't try -- and we left that basically to the guidelines.

4 Like I said, that was some of the early stuff. And
5 then as this thing evolved, I would hope -- I think we've got a
6 success story in that one, all right?

7 But that's -- but it all comes back again to process,
8 what it's going to be used for, and having the communications
9 up front so that when these things are developed, we understand
10 how it's going to fit into the regulatory process, if at all.

11 But if it does, you know, where does it fit in and
12 how is it --

13 MR. CARPENTER: There is something to bear in mind
14 here. It's that just because there is something that's
15 presently in the regulatory process, it doesn't mean that it
16 has to stay there.

17 Again -- and I apologize for continuing to use the
18 VIP, but it's the only voluntary industry initiative that we
19 really have experience with -- they came in and they told us
20 that they didn't think there was a safety significance in doing
21 reactor pressure vessel shell weld inspections.

22 We disagreed with them initially, but they came in
23 and they gave us a good technical argument for it, and they're
24 not doing it now.

25 So that's a place where you can do a win/win on

1 getting something that is not technically safety significant
2 taken out and saving the industry a lot of money.

3 So this can be a process that can do a lot of good
4 things here.

5 MR. VINE: We're pretty proud of the initiative. I
6 mean, it's been a success story, we agree with that.

7 But as I said, there's been an element of trust here,
8 because there are a lot of things that we put in that program
9 that go beyond the regulatory requirements; that go beyond what
10 would be a compliance issue; that go into the areas of good
11 practices and those kinds of things.

12 And I think it would be a huge disincentive for the
13 kind of progress we want to see here, if we try to sweep every
14 little good practice into something that's enforceable.

15 If you do that, you're going to discourage the
16 industry from collecting and disseminating good practice
17 information as part of an overall initiative.

18 So we have to have this threshold of what in an
19 initiative is important enough to be -- to get into the
20 inspection and enforcement cycle.

21 MR. CARPENTER: Let's also make sure that we
22 understand that even though the industry, per se, the BWR
23 fleet, has committed to following the BWR VIP guidance, even
24 before we, the staff, approve it, if they come into us -- for
25 instance, Plant A comes in and they say, you know, we've got an

1 outage coming up, and we know that we committed to do X, Y, and
2 Z, of the VIP program, but we just can't fit it into our outage
3 this season. It's not a regulatory requirement and we're going
4 to defer that.

5 We say, well, okay, you defer it. We don't have a
6 technical or regulatory hook to make you do that; it's
7 something you voluntarily do. What are you going to do next
8 time?

9 And they come back and they tell us what they're
10 going to do next time? So, it's not like we're going to come
11 out and bash somebody over the head.

12 MR. HERMAN: But the implementation of those of
13 programs let's talk a little about just what happened,
14 actually, and not in specifics.

15 But early on when there were questions about cracking
16 internals and cracking shrouds and whatever, okay, the first
17 question of the whole thing was, well, what's the safety
18 significance of it?

19 And the whole game plan for doing that whole program
20 was based on a risk assessment and a qualitative systems review
21 to rank which items to get at in what kind of an order.

22 Okay, so I think that program, although the
23 inspection things and flaw evaluations things are
24 deterministic, the foundation of what was to be done was
25 certainly risk-based in the first place, and it was

1 systems-based in terms of importance.

2 And the problem is that if you don't do some of those
3 things, you can get injunctive issues that you start getting
4 into performance-based regulations. I mean, you get into these
5 things if you don't have an argument in terms of, say, a
6 structural integrity argument in terms of components.

7 Then you can get into what I'll call more esoteric
8 systems-type arguments in terms of multiple failures of things,
9 synergistic effects.

10 Those are all part of the process, too, and --

11 MR. STROSNIDER: We keep going round and round on
12 BIFF and BIFF is the one that's working.

13 [Laughter.]

14 MR. STROSNIDER: So the question we ought to be
15 asking ourselves is why does it seem to work pretty well? I
16 think part of this discussion that Gene was just going through
17 is, I think it works pretty well because we had enough -- and
18 there was good technical work, first of all.

19 But putting that aside, we had enough discussion that
20 I think both the industry and the NRC understand how this thing
21 fits into the process.

22 And basically we took advantage of existing
23 processes, which is something that we said back in the meeting
24 in Chicago that in this voluntary initiative framework, we want
25 to use existing process to the extent possible.

1 The management system is an example of that. These
2 are commitments, licensees know how to interact with the staff
3 in terms of if they want to change commitments, and that's been
4 working, and that's fine.

5 So I think when we look at this, we say, well, you
6 know, what are some of the lessons we can learn to help make
7 things work? That's one of them and I think that's an
8 important thing, that we try not to invent new processes, but
9 try to fit.

10 If you look through that list of things that we need
11 to address in these voluntary initiative protocols, you know,
12 was we go through that list, we ought to try to take advantage
13 of and not reinvent some of these things that we've already
14 worked out.

15 MR. HERMAN: And they don't ever show up in any of
16 the process development issues to start with on either side.

17
18 But the thing that makes the VIP work is there is
19 utility management oversight at the vice president level on
20 that program, and there is high attention to it on the NRC
21 level.

22 The technical grunts go do their thing, and before it
23 goes out and becomes policy and before both sides commit to it,
24 there's a buy-in by management on both sides that this is an
25 adequate way to go after these things, and both people make

1 commitments in terms of what they're going to do and they both
2 stick to them.

3 I think that makes this kind of stuff work better
4 than anything else.

5 MR. MARION: Also, it helps to find problems when you
6 do inspections. I mean, let's be realistic. I'm relating back
7 to the head nozzle cracking issue where inspections were done
8 and they couldn't identify anything.

9 So I suggest that contrasted to the basic
10 differences, and not so much the bodies involved in technical
11 expertise, as what was coming out of the inspection results.

12 MR. CARPENTER: That's another example where we had
13 proposed to the industry that they do a voluntary industry
14 initiative. The industry decided that they didn't see the need
15 for that, and we went ahead and put out a generic letter
16 anyway.

17 So the process does work. And on that note, if I
18 might suggest, we've been at this for about a hour and a half
19 now. How about we take about a ten-minute break and then
20 resume for a final two hours.

21 MR. SHERON: What else do we have to do?

22 MR. MARION: We have a preliminary conceptualization
23 of a flow chart that the three of us put together, primarily
24 with Gary Vine being the primary individual helping us.

25 When we reconvene, I'd like to let Gary walk you

1 through this.

2 MR. MODEEN: I don't think that we have more than a
3 half hour for some of the process protocol issues, and it
4 relates to that chart.

5 [Discussion off the record.]

6 [Recess.]

7 MR. CARPENTER: Is there anyone else who would like
8 copies of the meeting attendance sheets?

9 [Show of hands.]

10 MR. CARPENTER: Hopefully we have enough.

11 MR. SHERON: I'll stick this out for about 30 minutes
12 and if you guys need to keep going, keep going.

13 MR. MARION: Let me try to summarize a couple of key
14 point: Number one, we really support the concept of NRC being
15 an objective, strong, credible regulator. And we don't want to
16 --

17 [Laughter.]

18 MR. MARION: Good, I'm glad to hear that. We don't
19 want to get involved in anything that would cast doubt on that.

20 We talked about the perception idea and substituting
21 for regulatory action, so we're kind of sensitive to that. I
22 think the industry, through NEI and other industry
23 organizations, has demonstrated an ability to solve problems in
24 a direct manner.

25 Hopefully, the NRC has been satisfied where industry

1 has pursued something in a complementary fashion. And I think
2 that success in itself suggests that we look forward to
3 opportunities where we can determine a complementary
4 relationship; it's very important.

5 And we made the point earlier about open discussion,
6 once the issue is identified; the importance of getting an
7 understanding of the regulatory requirements and expectations;
8 problem definition, et cetera.

9 We need to be careful because NEI does not want to be
10 perceived as an extension of the NRC in any process, in any
11 way, shape, or form, and I don't think that would serve the
12 NRC's interests either.

13 But more importantly, to go back to the earlier
14 discussion, NEI will not inspect the industry and will not
15 enforce the industry to any kind of guidance that NEI may
16 develop, whether it's just a guideline document or if it's part
17 of a formal industry initiative.

18 MR. MARION: I thought you guys had a process,
19 whereas if 80 percent vote for something --

20 MR. SHERON: We do.

21 MR. MARION: Would you have process where the chief
22 nuclear officers agreed to take a certain position on a policy
23 matter, or to implement a particular guideline that we may
24 develop, et cetera?

25 MR. SHERON: My understanding is that that's a

1 binding commitment.

2 MR. MARION: That's a binding commitment within the
3 industry.

4 At best, we identify a schedule by which that
5 implementation will be completed. We'll gauge the level to
6 which that schedule has been satisfied, but we will not go out
7 and inspect or enforce. We'll communicate with the chief
8 nuclear officers, get the information, request the information.

9 If they come back and say, yes, I implemented this --

10 MR. SHERON: Well, what does mean? If NEI writes a
11 letter and says that the industry has agreed to, for example,
12 adopt and implement a certain NEI report, all you're saying is
13 that, gee, that's what they told us.

14 MR. MARION: Hopefully, as a result of the
15 discussions we've had on this concept of voluntary initiatives,
16 we will also tell you in our interactions, that certain aspects
17 of that guideline may fall within NRC's regulatory scope.

18 MR. SHERON: Yes, but what I'm worried about is that
19 you're not telling me. You can't make a commitment for every
20 licensee.

21 MR. MARION: Right.

22 MR. SHERON: You're going to go out and ask every
23 licensee to make a commitment.

24 MR. MODEEN: Brian, let me give you an example: For
25 instance, you haven't asked us to do that on like steam

1 generators, although we're working on something we think
2 everyone will adopt and then you probably have that count.

3 In the case of severe accident management, I think a
4 lot of the history and the footprint and all that, all the
5 money spent, we actually were asked by the staff, although
6 after we informed you or I guess it was Bill Russell, by
7 letter, that, yes, the industry voted binding commitment, et
8 cetera, we were asked by the staff, gee, we would appreciate it
9 if every licensee would put it on the docket. We created a
10 template and everyone did in that case.

11 So obviously there is some flexibility that,
12 depending upon the situation, the need, or otherwise, we
13 generally haven't done that. Again, that's been a letter from
14 us.

15 I think the bigger point, as Alex is saying, we are
16 not the policeman for a formal position; we are the
17 communicator of it, and we also periodically --

18 MR. SHERON: It's very important, okay? I'm not
19 asking you to go out and enforce and say, you know, we've
20 inspected every licensee and we've guaranteed that they're all
21 doing this.

22 But I need to understand what it means when you come
23 forward and say that every licensee has adopted something. For
24 example, your Y2K guideline.

25 We've been running around advertising to the Congress

1 and the public that all the utilities have agreed to follow
2 that, okay? Based on your -- what you're telling us, I mean,
3 now it has to have some credence. You have to have some
4 credibility when you make a statement.

5 If we go out and find out that there are licensees
6 playing fast and loose, saying, we never agreed to that, or
7 whatever, you know, then you have no credibility.

8 We can't -- you know, anything you write into us
9 would be like, well, that's nice, but --

10 MR. MARION: We understand, we recognize that, and we
11 take that action and those kinds of communications to the NRC
12 very seriously from that perspective. We fully understand.

13 However, if that particular initiative topic requires
14 some kind of regulatory commitment, and you folks make that
15 clear, then one of the things we could do is encourage
16 licensees to submit something on their docket that says we will
17 do this or portions of this guideline, whatever the case may
18 be.

19 But we need to get that understanding right up front
20 so you're not disappointed at the tail end of the process, and
21 we're surprised because you've got a new expectation you've
22 given us.

23 And we've done them both ways over the years.

24 MR. HERMAN: But it really needs to get defined up
25 front. Let me give you an example, okay?

1 If I took the inspection guidelines and the flaw
2 evaluation guidelines and considered what I had as a commitment
3 to doing something on some schedule, but not to follow what's
4 in the document, okay?

5 I mean, the documents -- a VIP type of thing for
6 doing flaw evaluation is very specific stuff. I mean, it's to
7 the point of brushing something to do a visual exam, versus not
8 brushing it.

9 It's coming up with uncertainty values on
10 measurements with agreed upon methods. And those aren't loose,
11 I'm going to go out and make a commitment in terms of everybody
12 is going to meet Y2K.

13 I mean, it's not the same ball park. They need to
14 get defined in the process of what needs to be defined.

15 And if you can't reach that and if you can't get
16 commitments that an owner is going to follow that program, I
17 don't see where we have any other alternative, other than go
18 out and write regulatory documents.

19 MR. MARION: Okay.

20 MR. STROSNIDER: Just for the record, though, I want
21 to make it clear that the Y2K guideline were a little bit more
22 substantive than that, too.

23 [Laughter.]

24 MR. STROSNIDER: From a Y2K point of view, there was
25 a lot of detail in that guidance.

1 MR. HERMAN: We'll find out.

2 MR. MARION: Let me go back to the point we made
3 earlier about concerns with the SECY paper on this topic, as
4 well as some of the language in the SRM.

5 Fundamentally, if NRC believes regulatory action is
6 appropriate, then pursue regulatory action. We've had this
7 discussion from time to time.

8 That, we think, is NRC's fundamental statutory
9 responsibility. We think an aspect of that that's been very
10 beneficial to both the NRC and the industry is, at the time you
11 get your thoughts together on what the issue is and what your
12 options are, if you want to talk about it, we're available to
13 discuss it with you.

14 We demonstrated in the past that there are things
15 that we can do that can help deal with the problem, okay? So
16 that communication is very important.

17 From the standpoint of applying voluntary industry
18 initiatives in the regulatory process or giving credit for
19 voluntary industry initiatives in the regulatory process, I
20 think there's probably a very limited set of initiatives that
21 fall within that scope.

22 We could decide to undertake an initiative tomorrow
23 on something that utilities may decide to implement under their
24 Part 5 program, whether it be under Appendix B or under the
25 maintenance rule or whatever.

1 That puts it within NRC's regulatory scope. So I
2 submit that that's the arena where inspection and enforcement
3 takes place.

4 Inspection and enforcement are going to be two points
5 that are going to be discussed extensively on the front end of
6 the process, unless we have a clear understanding of the
7 problem and the regulatory requirements and expectations.

8 And sometimes we may not have a sufficient
9 understanding on inspection and enforcement until the
10 initiative is developed, the documents are thrashed out and
11 people get a better sense of implementation. I just offer that
12 for your consideration.

13 MR. STROSNIDER: Let me make sure I understand
14 something you said there. If I heard you right it was that if
15 the NRC concludes that there is a need and a basis for taking
16 regulatory action, that we should take regulatory action.

17 All right, that's opposed to pursuing the voluntary
18 initiative. Now, let me -- and to understand that, if we, for
19 example, conclude that here's an issue that warrants a generic
20 letter and we put it through our generic letter process, and
21 whether it's compliant or whether it's cost-beneficial, but we
22 put it through 51.09 and say this is a legitimate generic
23 letter.

24 Would you prefer that we put that generic letter out,
25 or that we come to the industry and say, before we put this

1 generic letter out, here's the issue, and do you want to take
2 it on through a voluntary initiative in lieu of the generic
3 letter?

4 MR. MARION: I would prefer a public meeting to
5 discuss the merits of the issue, to make sure we understand
6 what the NRC concerns are, and you understand what our concerns
7 may be relative to the problem.

8 I think we ought to agree to do that right up front
9 when one of these issues are identified. And if NRC has
10 already done the background work to support a regulatory
11 analysis, then one of the questions we're going to raise -- and
12 we've done this in the past -- is, well, if you can justify it,
13 then why don't you go forward with regulatory action?

14 Fundamentally, that's the expectation of the NRC as a
15 regulatory agency.

16 MR. STROSNIDER: I understand that, but I think I'm
17 asking a little different question, which is, what is your
18 preference? Would you prefer to see the generic letter come
19 out the door, or would you prefer -- if we went all the way to
20 that point, and said, before we issue this generic letter,
21 let's go let the industry take a shot at it on their own?

22 MR. SHERON: We're doing this, Alex, because we've
23 heard so many complaints about the generic letter process. Oh,
24 gee, we don't like you citing 50.54(f) because, you know, it
25 says, you know, you know, tell us what why we shouldn't bend,

1 fold, or spindle or mutilate your license or something. And,
2 gee, you guys never do that, you know?

3 Yes, the reason we do it is because most of the
4 times, licensees pay heed to the generic letter, okay? If a
5 licensee came back and said, sorry, we're not going to do this,
6 okay? We might bend, fold, spindle, and mutilate their license
7 with an order, all right?

8 But the point is that we heard nothing but complaints
9 about the industry from the utilities, okay? Gee, all we get
10 is these generic letters from the vice presidents, the plant
11 managers, okay?

12 They don't put a risk perspective on them; they don't
13 do this, they don't do that, you know, blah, blah, blah, on and
14 on, okay?

15 The objective here is, good, let's engage the
16 industry right up front, okay, and let them come back and tell
17 us what they think, okay, is the right response, within certain
18 bounds, okay?

19 I mean, obviously it's not a blank check, just as you
20 know, it's not a problem, we'll let this thing ride for a five
21 years, okay?

22 That's not the point. We're going to express to you
23 what the concern is, what we think the urgency might be, okay,
24 and the like, all right?

25 But the idea is to let the industry look at the issue

1 and say what do we think is the appropriate response that we
2 can do that makes sense?

3 MR. STROSNIDER: But I think your concern -- and let
4 me say what -- let me state what I think it is and you tell me
5 if I'm right.

6 I think your concern is that if we just talk about
7 voluntary industry initiatives, that you're going to be getting
8 a letter every other week from NRC saying here's another
9 initiative, and that it won't have --

10 If you look at the generic letter process as an
11 example, it has the controls of 51.09 and our committee for
12 review of generic requirements, and there's a process, all
13 right?

14 And correct me if I'm wrong, but I think maybe part
15 of your concern is that if we just talked about voluntary
16 initiatives without going through that process, we're just
17 going to send these saying address this, address this, address
18 that without some level of involvement.

19 MR. VINE: The concern gets to the way you worded the
20 question.

21 I think the right answer to your question is that
22 it's not an either/or; that it's both. That when there is an
23 issue that's appropriate for the industry to take a look at and
24 develop guidelines for, we'll do that, whether there is a
25 regulatory problem or whether it's just an economic issue.

1 The question is, if the issue that you are concerned
2 about has safety significance to the level of the backfit rule,
3 then what I think we would prefer to see is a -- and we'll show
4 you this in the flow chart -- is a parallel process where the
5 industry takes on the job of studying the issue, defining what
6 the appropriate action should be, getting your approval to
7 those as the appropriate approach.

8 And then if you're satisfied with that, and you don't
9 see a need to go in and get into enforcement action, then we're
10 done.

11 But if enforcement action is required, then you have
12 to have a regulatory basis for that, and the regulatory basis
13 ought not to be just an industry guideline document turned into
14 a regulatory requirement.

15 MR. STROSNIDER: We're mixing some things in here in
16 my mind, because --

17 MR. MODEEN: One clarification before we get in
18 there. I think from the discussion of that in the past, is the
19 concern that -- and we definitely want the communication up
20 front -- but if we get to the point that the solution, however
21 we have crafted it, really requires either a new regulatory
22 requirement or what we view as a new regulatory position, well,
23 then we believe the NRC process has to be followed to establish
24 that whether it's adequate protection, cost/benefit under 109
25 or whatever that might be.

1 That's really the thing where we don't want to --

2 MR. SHERON: You're forgetting what I said before,
3 okay? If it's a backfit, if it's a true cost-enhanced backfit,
4 okay, that has no underling regulatory basis, all right, for
5 example.

6 Then, first off, I'm not going to come to you and ask
7 you to do it unless I've got in my back pocket, you know, a
8 51.09 analysis that says I can justify this.

9 It's a pretty high threshold to cross, okay? So, you
10 know, and I can't even remember too many things in the past,
11 okay, where we've come to you and said, we have a cost -- a
12 safety enhancement that's cost-beneficial, okay?

13 Compliance is a different thing, all right? And I'm
14 saying that I look at the vessel head, okay? Again, it was an
15 issue where we could come out with a generic letter and just
16 tell every licensee, tell us what you're going to do to inspect
17 your vessel heads?

18 And I can have 103 plants out there or whatever it
19 is, inspecting vessel heads. Or we can go to the industry and
20 say we've got a concern, and the industry comes back and says,
21 good, we're going to propose to you, a program.

22 Everybody doesn't have to inspect; we're going to
23 sample, we're going to bid them, okay, in terms of some
24 category and the like, and we're going to do representative
25 samples. And it's going to save the industry a hell of a lot

1 of money, all right?

2 And you can do that in other areas where we have a
3 problem. Rather than us going out and beating each individual
4 licensee over the head with a hammer, the industry can come
5 back and propose a program that samples or whatever, all right,
6 and doesn't cost.

7 So there are big cost savings that we see with
8 voluntary industry initiatives.

9 MR. MODEEN: I was afraid Jack was saying, gee, I
10 think you just told me I don't want to do anything with VIIs
11 and this type of thing.

12 MR. STROSNIDER: I think that what I heard was that
13 if we go to the point of saying we've got a backfit analysis,
14 whether it be cost-beneficial or compliance, that basically
15 what you want is a lot of perhaps enhanced communications on
16 how we're going to deal with it, but that you want us to put
17 the letter out.

18 MR. MARION: No, a public meeting to discuss and
19 understand. Basically, if you've done all the legwork, then
20 why would we want to prevent you from carrying forward with
21 your mission.

22 MR. SHERON: We've done the legwork, okay, where we
23 can put out the usual generic letter that says send in gobs of
24 information, justify your existence.

25 MR. MARION: You keep talking about how we don't like

1 generic letters. The thing we don't like, fundamentally is to
2 use them to impose new regulatory positions without a sound
3 basis. If you look at the generic letters and the comments
4 that we've provided in the past, that's where we've been
5 arguing.

6 MR. SHERON: Alex, I will agree to disagree on that
7 point.

8 MR. MARION: But I would suggest, since we brought up
9 generic communications, we've got to come to closure on your
10 new generic communication process. The same issues apply in
11 your use of voluntary initiatives -- understanding and clarity
12 and expectations, and we've got to find a way to get through
13 all this.

14 MR. STROSNIDER: Just not to go too far off, when you
15 talk about generic communications, because you brought that up
16 earlier, you're talking just generic letters, or are you
17 talking about information notices?

18 MR. MARION: Yes.

19 MR. STROSNIDER: Are you talking about risks? Are
20 you talking about the whole --

21 MR. BATEMAN: I'd just like to get one thing on the
22 record here. My sense is that with these voluntary industry
23 initiatives, one of the flies in the ointment is this concept
24 of inspection and enforcement.

25 What I hear is that your position is that if the NRC

1 wants to inspect and enforce something, they need to pursue the
2 regulatory process with whatever it might be.

3 On the other hand, if the NRC is willing to establish
4 a voluntary industry initiative, your expectations are that the
5 NRC would not inspect and enforce, by definition, because it is
6 a voluntary industry initiative, unless it reached some
7 threshold of noncompliance that we'd, I guess, have agree upon
8 what that is.

9 But if it didn't meet that, there would be no NRC
10 inspection and enforcement. And so I think we're kind of at an
11 impasse here in that the Commission has asked us to investigate
12 and report back to them in a Commission paper.

13 At least one aspect is, how do we relate enforcement
14 to voluntary industry initiatives? I think we're at a point
15 where you guys are saying, if you're going to give us a
16 voluntary industry initiative, you're not going -- we don't
17 think it's right that you inspect and enforce.

18 And if you want to inspect and enforce, then go
19 through rulemaking and do it.

20 MR. MARION: That's why I posed that question.

21 MR. BATEMAN: We've got to figure out how we're going
22 to get around this.

23 MR. MARION: If it's a compliance issue, then how can
24 the voluntary initiative be voluntary.

25 If it is a compliance issue, then inspection and

1 enforcement should be clear.

2 MR. STROSNIDER: I keep coming back to these things
3 are not voluntary.

4 MR. MARION: Right.

5 MR. STROSNIDER: They're voluntary initiatives in
6 lieu of the NRC -- of a regulatory action.

7 I mean, we can come tell you to do it, or you can
8 recognize.

9 MR. MARION: I'll tell you right now, leveraging a
10 potential generic letter is counterproductive. I think the
11 greatest successes have been had where we haven't tried to be
12 heavy-handed, and tried to focus on the technical issues as
13 they relate to the current regulatory requirements and get that
14 understanding.

15 So, I would suggest that we proceed.

16 MR. VINE: Let me try to answer those questions
17 again. It's part of the chart here.

18 MR. MARION: It's covered by this, Gary.

19 MR. VINE: Yes, okay.

20 MR. MARION: Isn't it?

21 MR. VINE: Yes, let's go through this, and then I'll
22 make the point. But what's going to be very clear is that it's
23 not an either/or; that we're not saying that if you have a
24 clear case of an issue that clearly meets the backfit criteria,
25 that we aren't going to establish and industry initiative.

1 We're going to do that, and all we're saying is that
2 when it comes time to establish inspection/enforcement
3 procedures, you have to go through a regulatory process in
4 addition to --

5 MR. BATEMAN: You don't want us coming and inspecting
6 and enforcing against what you've done.

7 MR. VINE: Our full-scope guidelines. Maybe we sit
8 down together with our guidelines and figure out what portion
9 of those are appropriate for inspection and enforcement.

10 That's what this chart basically shows. and I think
11 we've talked about so many of the points here that I'm not
12 going to belabor each and every box.

13 But conceptually what it says is that when an issue
14 comes up from whatever source, that one of the first things we
15 do is, we end up in a joint public meeting that really goes
16 over the issue, and not just to understand it technically, but
17 also to understand the implications in terms of safety and
18 cost, what are the likely options that we might consider or you
19 might consider, so you have a big picture of the whole thing,
20 all the way to some likely endpoints in terms of whether or not
21 this is ever going to rise to the threshold of backfit
22 criteria, whether or not we're going to end up with
23 inspection/enforcement at the end of this or not.

24 It's an overall, big-picture look at the issue up
25 front and early.

1 After you have that, then the industry is going to
2 take on a process to decide whether or not it wants to
3 undertake an initiative.

4 If the issue is so straightforward that there's no
5 value-added and the industry is sitting down and working
6 through our consensus process, then -- and a regulatory
7 requirement that just says do X is what everyone agrees needs
8 to be done, then we don't have to do this.

9 But if it's an issue where there's some real
10 value-added, and the industry is grappling with the issue for
11 awhile, building some consensus on what the appropriate actions
12 might be, then we're going to come down this side and do some
13 things.

14 They could come in a variety of different formats.
15 There could be some voluntary guidelines that could rise to
16 more formal levels of commitment and so forth, depending on the
17 significance of the issue.

18 But I want to reiterate something I said earlier:
19 The significance of the issue is not determined solely by its
20 regulatory significance.

21 There are very significant issues that NEI has taken
22 on, and they even had 80 percent votes on, that have no
23 regulatory significance. They have to do with economics, they
24 have to do standardization in the industry to get things done
25 consistently.

1 So there are a lot of things that we're going to take
2 on, independent of whether or not the NRC --

3 MR. STROSNIDER: And we have identified, I think it
4 was Definition 4 where you talked about --

5 MR. VINE: Option 4.

6 MR. STROSNIDER: Option 4, industry initiative, in
7 some cases it might require some NRC cooperation in terms of if
8 we need to change, but we recognize that that goes on, and I
9 think we were trying to accommodate that.

10 MR. MODEEN: Our Personnel Access Data System
11 required some things to interact with the staff to make sure we
12 could do it.

13 MR. SHERON: The first thing you need to do on this
14 is that you need to have a dotted line from the issue
15 identified, over to NRC evaluates against adequate protection.

16 We're not fooling around, you know, set up a meeting
17 and have a discussion. If we have a safety issue that comes up
18 that's important, that's adequate protection, we're going to
19 take action right away.

20 MR. MARION: This could be, depending on the issue,
21 could be a brief heads-up at the one of the EDO meetings that
22 we have periodically, and say, oh, by the way, we've come
23 across this and we're going to pursue regulatory action. We've
24 made the case; you'll see it.

25 MR. SHERON: If it's important, we can get an order

1 out here in a day.

2 MR. MARION: We don't you want to schedule a public
3 meeting in that kind of situation.

4 MR. HERMAN: I really think we need to pursue this a
5 little further before we get into this, okay?

6 If you took the issue on the CRDM mechanisms, okay --
7 I'm not talking about the ones on the stub tubes; I'm talking
8 on the mechanism issue.

9 There was a problem found on a plant that had a very
10 large flaw in it, okay?

11 MR. VINE: That's the Prairie Island problem?

12 MR. HERMAN: That's the Prairie Island problem. It
13 didn't meet the criteria in terms of safety margins, okay?

14 Nobody knew how it got there, why it got there,
15 whatever, okay? And it was something that something had to get
16 done pretty quick on that thing.

17 I don't think it was an adequate protection issue,
18 myself. If you looked at it from a risk perspective, it would
19 be important because it could be a small loca, but on the other
20 hand, probability, I don't know.

21 If I get into this process and you say, well, that's
22 pretty clear-cut, go write a generic letter, if I start at that
23 point in time to write the generic letter, I have no choice to
24 write that generic letter any way but say go out and inspect
25 the fleet at the next refueling outage, if I have a

1 justification to make it go that long, okay?

2 What we ended up with was a program that was
3 interactive with the industry. We did some inspections, the
4 industry proposed some other things along the road like at
5 statistical approach to it and the rest of it.

6 And I think there was one big benefit to the industry
7 by doing it the way we did it, versus us issuing a generic
8 letter. And I think --

9 MR. STROSNIDER: I would just make one comment about
10 it. I think maybe we do have options other than say go inspect
11 everyone. You know, we can write a generic letter that says
12 come back and tell us what corrective action you're going to
13 take with regard to this issue.

14 And maybe the response is an integrated program.

15 But to get to your process here, to get to your
16 chart, I guess actually it does answer one my questions.

17 You really don't like generic letters because that's
18 not on here anywhere.

19 MR. VINE: This is a simplified version.

20 MR. STROSNIDER: But to be serious about it, though,
21 it gets back to the question I asked earlier. Where do you see
22 the generic letter fitting into this?

23 I think that's --

24 MR. VINE: I'll explain that as we go along.

25 I want to make one more point about the open

1 communication at the top. It's not necessary to say that the
2 staff has to have done a thorough backfit analysis before we
3 have that discussion.

4 If there is an issue that comes up that your
5 management believes or the industry's management believes has
6 the potential of being a significant issue, but we're not yet
7 sure what tests it might or might not meet in terms of safety
8 significance, or where it sits in the regulatory scheme of
9 things, but it's likely to be something that we need to air and
10 discuss, we have the meeting.

11 You don't have to have all the answers before you
12 have the open discussion. I think we've sometimes made the
13 mistake of not having the discussion early enough, and there
14 are some fundamental misunderstandings about the issue that
15 result in the different paths we take.

16 Having this up-front meeting, even without all the
17 answers, is probably worth having. Then if there are some
18 holes, you identify them and go and find the answers to them.

19 Anyway, as you come down the left-hand side, what
20 we're suggesting is that the NRC at some point -- and maybe you
21 do this to some degree before you have the public meeting --
22 but at some point, you have to go through the rigorous process
23 of looking at protection and the 51.09 criteria and determine
24 whether or not the particular issue triggers those criteria.

25 If they trigger the criteria, then you come down a

1 path that really splits and does two different things: One is,
2 it talks about rulemaking.

3 The other is that it talks about there being an
4 industrywide initiative. And whether there or not there is,
5 there are certain things we'll do if the industrywide
6 initiative does go forward.

7 You will notice that those are parallel paths.

8 MR. SHERON: That should be a decision point there,
9 okay? Does the industry agree? If the industry doesn't agree,
10 okay, then you get this arrow that goes off here that says
11 generic letter, big hammer, and the rest.

12 MR. VINE: But even if we agree that rulemaking is
13 appropriate because it's a clear compliance issue, that doesn't
14 mean that all these values that you've talked about of the
15 industry taking the issue on in terms of consensus-building,
16 the analysis, basically working the issue to have a proposal
17 we're ready to live with, shouldn't take place anyway.

18 Those values still occur in a case where you
19 ultimately have to go to rulemaking. So that's why I keep
20 arguing that there's a parallel path there where we're still
21 going to look at it in terms of coming up with what we think
22 the best solution to the issue is.

23 And then you can embody that in either a rulemaking
24 activity or a generic communication. The reason generic
25 communications don't show up on this more simplified list is

1 that there's still, I think, within the industry, some
2 disagreement as to whether or not it's appropriate to include a
3 generic letter in this process, if, in fact, the criteria are
4 triggered.

5 I think a lot of the industry and utility execs
6 believe that if you've triggered these criteria of either
7 adequate protection or 51.09, that you have to go to
8 rulemaking, and not just issue a generic letter.

9 MR. SHERON: No, see, that's where we disagree.

10 MR. VINE: That's a fine point.

11 MR. SHERON: Triggering 51.09 is compliance, okay?
12 And that's where we get into this disagreement.

13 We write out generic letters a lot of times, okay,
14 that basically question compliance.

15 MR. VINE: Right.

16 MR. SHERON: And you guys disagree and you claim
17 that's a backfit.

18 MR. VINE: Right.

19 MR. SHERON: And we've had this one out, okay? We
20 interpret this entirely different.

21 MR. VINE: This process will work, whether or not we
22 agree on that particular point or not. That is the whole
23 essence of this.

24 MR. MARION: There will be times when we agree and
25 times when we don't.

1 MR. VINE: Right.

2 MR. MARION: But we still want to talk about it and
3 try to work it out.

4 MR. SHERON: What I'm saying is that there is no
5 arrow going off saying, disagree-generic letter or staff does
6 their thing; industry does their thing.

7 MR. HERMAN: I'd like to see a clarification that
8 says where it says 51.09 criteria, a paren that says compliance
9 exception or justified backfit.

10 MR. MARION: We would like you to take a look at this
11 and give us comments. You can send us a markup or call us.
12 This is just a preliminary conceptualization of the process as
13 we see it. Have a good holiday.

14 MR. SHERON: Thank you.

15 MR. VINE: Before we get to the bottom box on the
16 left-hand side, let me just follow through the
17 criteria-not-triggered line.

18 In many of these cases, there will still be an
19 industry initiative of some kind at a guideline level or
20 whatever.

21 And the commitment in this process, of course, is
22 that the industry is going to keep you informed and show you
23 what we're doing, even if those criteria are not triggered.

24 And that deals with this piece of the case that we
25 were talking about before where if you don't -- if you can't

1 meet the backfit criteria, or you don't really see a need for
2 taking enforcement action, but you really want to be satisfied
3 the industry is doing the right thing, this process takes care
4 of that.

5 It shows -- keeps the NRC fully informed of what
6 we're doing and the progress we're making on dealing with that
7 particular issue.

8 And if you're satisfied with the voluntary nature of
9 that, where there's no enforcement process, but there is
10 industrywide participation, then we're home free on those
11 cases.

12 MR. BATEMAN: That's where the rub comes.

13 MR. HERMAN: Let me make a comment. I don't think
14 this is one iota different than what was proposed in the
15 criteria. I wouldn't get down -- with the criteria not
16 triggered department, that was the last item that we had on the
17 list.

18 The other ones would all trigger the criteria.

19 MR. VINE: Okay, let's do this: You're questioning
20 the -- I'll answer the question.

21 If you look at SECY 90-63, again, there are two
22 places -- and this gets back to my comment at the beginning --
23 where what the letter -- what the SECY says is that if an issue
24 is identified, there will be no regulatory -- no backfit
25 analysis required.

1 The NRC does no backfit analysis if the industry goes
2 ahead and does what you want them to do.

3 MR. HERMAN: I think what you heard is that --

4 MR. VINE: Well, I heard from Brian something
5 entirely different; that you will do that analysis and you will
6 tell us what you found, which is not what the SECY says.

7 MR. STROSNIDER: This is what I asked earlier. If
8 your concern was that you expected that sort of analysis before
9 any issue is determined to be an industry initiative or
10 requested to be an industry initiative --

11 MR. VINE: It doesn't have to be determined at the
12 very beginning. It only has to be determined before we get
13 into enforcement space.

14 The industry is going to move ahead and deal with the
15 issue technically.

16 MR. HERMAN: I think what Brian told you earlier is
17 that the process for getting something in to being an industry
18 initiative, would be running it up the chain, at least through
19 the Office level.

20 Prior to doing that, it's got to have at least some
21 expectation, if not a full-blown analysis, that either the
22 thing is a compliance issue or it is something that's an
23 adequate protection issue, or it's a safety enhancement.

24 I don't think it would get to you unless people had
25 at least made a preliminary determination.

1 MR. STROSNIDER: But I think what they're saying is
2 that that is not consistent with what the SECY says.

3 MR. VINE: The SECY doesn't say that.

4 MR. STROSNIDER: Point understood.

5 MR. HERMAN: We put it in the process.

6 MR. VINE: When we sat down to decide how to deal
7 with the issue, we looked at an NRC flow chart, and that's how
8 we got the idea of doing this flow chart.

9 We sat down and checked all the references, and one
10 of the references you cite on background is SECY 97-303. And
11 in there, there's a flow chart on how you deal with voluntary
12 industry initiatives.

13 And it starts at the top, issue identified; industry
14 comes in -- it's very simplified. Staff determines whether
15 it's acceptable or not, whatever the industry has proposed.

16 And it moves down to what it calls NRC followup
17 activities. And SECY 97-303 defines followup activities as
18 tracking, inspection, and enforcement.

19 And this SECY identifies followup activities with
20 those same three words. So, that's a process where the 51.09
21 considerations never even enter the picture.

22 It was issue identified, industry volunteers to do
23 something, go to enforcement. And that's why we decided to
24 take --

25 MR. HERMAN: I think you have to take into account,

1 the very first SECY, 97-033, probably was put together by RES,
2 whose probably not into licensing every day.

3 And some of the things may have got put in the second
4 paper. I think the intent of what will go in the process will
5 be certainly the screening you asked for in terms of how it
6 fits in the 109 thing.

7 I thought that was clear enough in the paper. I
8 guess it wasn't.

9 MR. STROSNIDER: I think there's an interesting point
10 here, because the concern that I keep hearing you express is
11 with regard to enforcement. You know, that 51.09 type analysis
12 or however you want to characterize it, needs to be done before
13 the NRC goes off and inspects and enforces against any this
14 stuff.

15 And I agree with that, all right, that, you know --
16 I'm a little curious as to why that's perceived as a big
17 problem. I wouldn't expect to go out and be able to pick up a
18 whole lot of violations that read contrary to this voluntary
19 initiative.

20 You know, they're usually cited against something
21 other than that. But to get to the bigger picture in terms of
22 this process, what I'm curious about is if you don't think --
23 we need to think about the question of at what point does that
24 sort of 51.09 analysis happen?

25 To me, enforcement is way down in this process.

1 That's implementation.

2 What I'm questioning is, at what point up earlier in
3 the process does it need to happen?

4 Some of this preliminary discussion you're talking
5 about, I think is to get a handle on some inputs that could be
6 used in terms of cost/benefit, in terms of compliance, in terms
7 of those things to make this determination.

8 And that determination might well -- you know, some
9 for of, is this -- and we talked in the paper about we need to
10 define an initiative that we're proposing, does it fall into
11 the bin of compliance? Does it fall into the bin of
12 cost-beneficial?

13 Is there an analysis that goes with that before this
14 thing ever becomes a legitimate issue to be addressed?

15 Or if it doesn't pass some sort of evaluation, does
16 it just -- do you throw it out, or does it perhaps fall into
17 that Category 4, which is, yes, there are some good things here
18 to do that would, you know, enhance good practice, and that the
19 industry might want to take it on on their own?

20 So, I'm not arguing that this sort of evaluation
21 needs to be done; in fact, what I'm questioning is, does it
22 need to be done sooner?

23 MR. BATEMAN: Right, but the point is this says while
24 the industry is evaluating the technical aspects of the issue,
25 we're evaluating the regulatory aspects of the issue.

1 MR. MARION: I do think the two things work in
2 parallel, and we know when the technical resolution is come up
3 with, we already know at that point, is this a legitimate
4 regulatory issue, or is it just effectively an economic issue?

5 MR. BATEMAN: Yes, but the industry may not want to
6 go off and spend any resources developing a technical
7 resolution to this problem if it's not a legitimate regulatory
8 issue.

9 MR. MARION: In which case you've got to do that
10 earlier.

11 MR. BATEMAN: My sense is the Commission wants to
12 have a regulatory hook in voluntary industry initiatives.
13 We've got to get by that some way.

14 Maybe we recommend to them that having an enforcement
15 hook in voluntary industry initiatives isn't mandatory.

16 MR. MODEEN: I guess I come back to -- you should
17 have that hook if the backfit criteria or adequate protection
18 are triggered.

19 MR. BATEMAN: I said this earlier. If it fits the
20 existing process. You do not want to modify -- we don't want
21 to invent a new enforcement and inspection process. We don't
22 want to modify the existing one.

23 What happens is that in the case of the BWR VIP -- we
24 come back to that example again -- the safety evaluations that
25 we're writing say this is an acceptable way to satisfy Appendix

1 B, all right? And you can go through the criteria and say,
2 yes, you found cracking and you need to take corrective action.

3 All right, what the staff is saying is that we've
4 looked at this and this is an acceptable corrective action.
5 That doesn't say the licensee can't do something else.

6 But if they choose to do something else, we may come
7 out and inspect it, and we may ask the question, how does this
8 satisfy various criteria?

9 All right, we've tried to keep it in the context of a
10 well-defined, know process, all right, and that's just one
11 example.

12 When you come through this thing, when you go through
13 an analysis, a 51.09 analysis, you ought to be able to fit to
14 here's the regulatory hook, based on the 51.09 analysis. And
15 that's what you inspect and enforce against.

16 MR. MARION: What about NEI 97.06? How does that fit
17 here? How does that fit here?

18 MR. BATEMAN: You go back and look at the SECY papers
19 we've written, we've laid out compliance arguments in terms of
20 meeting the licensing basis for the factors of safety and for
21 leakage during accident conditions, et cetera.

22 The one twist that came in there that we had to
23 acknowledge was that our own licensees' tech specs didn't
24 really address these issues effectively.

25 So the NRC acknowledge that the tech specs we had

1 approved really didn't get there all the way either.

2 MR. MARION: So the sooner the NRC approves the tech
3 specs proposal, then the real hook will be in the
4 implementation of those tech specs.

5 The question was asked by you folks in one of our
6 more recent meetings, what are the enforcement aspects of this?
7 Do you guys think you're going to be able to enforce against
8 these guidelines, because if you think so, we're going to back
9 out of this because we didn't write our guidelines from the
10 point of view of enforceability.

11 MR. MODEEN: Yes, and we think we've worked through
12 that, and as I mentioned, as we were updating the lower tier
13 guidelines, we're flagging the pieces that are specifically
14 relevant to the overall initiative, plus we've addressed it in
15 the --

16 I mean, one reason we came to the conclusion,
17 although two years ago we really didn't want to modify tech
18 specs, said, you know, they're so inconsistent with current
19 practices and our formal position, we really need to bring it
20 up to date.

21 If I could just point one other thing, though, you
22 asked how do steam generators fit, and if you remember back
23 five or six years ago, one of the issues we were looking at is,
24 well, what about thermal induced steam generator tube rupture?

25 And there, you're into, gee, that's a new staff

1 position, obviously, and can you make the case? No, couldn't
2 make it generically; yes, things come up like Calloway's sleeve
3 and electrosleeves or something to deal with that case-by-case,
4 but here we also went through the process and concluded that,
5 no, rulemaking wasn't required because there really wasn't the
6 basis to establish a new position, and our initiative doesn't
7 address it.

8 That's a fallout that kind of gets thrown by the
9 side, and we didn't know that in 1993. We had to take awhile.

10 MR. HERMAN: Obviously things like steam generators
11 or paristeam generators clearly are covered under 50.55(a).
12 There's a code case out there for doing the sleeves. The
13 margins that are there are there as part of the original
14 designs.

15 MR. MODEEN: I'm not trying to argue.

16 MR. STROSNIDER: We've been through all that in the
17 details of working this thing out. But, again, when -- I think
18 one of the reasons that this appears to be on a success path is
19 that we tried to fit all this within an existing framework.

20 We agreed that the tech specs needed to be improved,
21 all right? And that's a generous thing. The NRC staff told
22 the Commission that the tech specs really didn't do what they
23 were supposed to do. But we agreed they needed to be approved,
24 so there are tech spec amendments that are going to come in.

25 In terms of the guidelines, we agreed that if we have

1 the technical requirements manual that says you need to have a
2 program, then you can go off and develop that program and
3 incorporate those guidelines in plant procedures or however the
4 plant sees fit, like they do with any other program, all right?

5 But then when you start looking at it in terms of
6 enforcement, all right, we're looking in terms of tech specs?

7 Any other enforcement that would happen with a good
8 program would probably be Appendix B, and those are the same
9 issues that we deal with in any other maintenance program or
10 anything else that's going on. Industry guidelines are used
11 all the time in those.

12 So we tried to put it into the same framework. All
13 right, again, not inventing something new that, here's some new
14 enforcement approach where, you know, we're going to try to
15 hold people to, you know, an industry guideline document. We,
16 in fact, tried to avoid that completely.

17 MR. BATEMAN: But, Jack, I'm not clear in my own mind
18 -- and you guys asked the question -- if I'm an inspector,
19 because I was an inspector for ten years before I got into this
20 end of the business, and I'm out walking around your site, and
21 I'm looking at what you're doing with your steam generators.

22 And I see you're not following a guideline, what am I
23 as an inspector going to do?

24 MR. MODEEN: I don't know exactly what you'd be
25 looking at.

1 MR. BATEMAN: Well, that's probably not the way we
2 want to go in the new oversight process. I think one of the
3 action items we still have is relative to the more
4 performance-based, risk-informed inspection processes. We
5 agreed we need to now look at steam generators.

6 And where he starts is with the performance criteria
7 and three key areas. And then he drops.

8 MR. MODEEN: Say there was some reason why I got into
9 loca, and failed to meet 3-delta-P two times in a row or
10 whatever.

11 So I go out and start looking to see what you guys
12 are doing, and I see you're not following some of your
13 guidelines. Are we saying here, Jack, that we've agreed that
14 the inspector can't enforce against this kind of an issue
15 because it's a voluntary industry initiative? I think that's
16 what you guys want.

17 MR. VINE: If you go to the bottom line of this
18 chart, you'll see where I think the industry has to make some
19 adjustments, as well as the NRC, to make this really work the
20 way it should.

21 And one of the adjustments we have to make is, we
22 have to be a bit more formal as we develop guidelines to decide
23 what we think is appropriate for inspection and enforcement.

24 Now, part of that is going to come out naturally in
25 the new oversight process where you've got a risk-informed,

1 performance-based approach to decide what goes in the baseline.

2 But part of it's going to 959 be our job, too. And
3 right now, we've put a lot of stuff in these guidelines that
4 are simply good practices that have no significance in terms of
5 being critical to compliance with the regulations.

6 They're simply there because it's a good place to put
7 them along with everything else to help these guys do the best
8 job they can. And we don't want to discourage that.

9 So the only way out of this box is to do what we show
10 at the bottom of this chart. As we develop these
11 comprehensive, full-scope initiatives and guideline documents,
12 that we take the time to decide what I worded here as NRC and
13 industry joint determine the minimum subset of specific actions
14 and/or performance-based standards that address the adequate
15 protection or triggered backfit criteria.

16 What is this -- this is kind of a necessary versus
17 sufficient question. What are the necessary elements of that
18 initiative, that broader initiative that meet this?

19 And those are the pieces of that guideline document
20 that have to be committed to the NRC, either in whatever
21 process we use, whether it goes on individual dockets or
22 whatever.

23 The broader scope is either going to remain voluntary
24 or in some cases, as you follow through this chart -- and this
25 is an important distinction because the more complicated flow

1 chart really describes how the industry goes through its
2 process.

3 And there are a lot of factors that determine whether
4 or not the industry makes a commitment to a guideline,
5 independent of the NRC side, just within our own process.

6 And it's very rare that the industry makes a formal
7 commitment to itself, but sometimes it does, to follow a
8 guideline. There are a couple of cases: One that had no
9 regulatory was access authorization; one that does have
10 regulatory significance is the steam generator issue where the
11 commitment was made before we got through a final determination
12 of what really is appropriate in the regulatory arena.

13 But the industry will have its own bases for deciding
14 whether or not to make a formal commitment. And sometimes
15 through the process, there will be a formal commitment to the
16 full scope of those guidelines, but that full scope commitment
17 is made to the industry by the industry to itself, not to the
18 NRC.

19 What the commitment is to the NRC is, again, to that
20 carefully defined scope that's appropriate for the triggered
21 criteria.

22 MR. STROSNIDER: I think what you're saying makes
23 perfect sense. I guess the -- it probably should be a separate
24 discussion, but I'm also a little curious as to what drives the
25 concern.

1 Like I say, I don't think we're out siding against
2 commitments. If anything, you know, deviation from
3 commitments, and I don't think we're doing much of that
4 anymore; we've got a new commitment control process.

5 MR. MODEEN: I came here when NUMARC was -- much like
6 Alex and from some of the post-
7 TMI, and we were still kind of reeling from the imposition
8 through the communication process of what were either new
9 positions or seemed like requirements but really weren't et
10 cetera.

11 You know, all that has changed dramatically during
12 the last ten or 11 years. I think, again, in some of the
13 things Gary was pointing out in the SECY document, there was
14 this concern that, gee, if we're not careful, we're going to
15 lose the discipline in that process, that either one
16 established a new position or established a new requirement.

17 Brian wants to keep focusing on just compliance
18 issues, but we see others, you know, since we don't always
19 agree on compliance exception characterizations and things that
20 really do look like new requirements and positions.

21 MR. STROSNIDER: I agree that we do need to be clear
22 in the guidelines that we develop here that these issues of
23 what's -- how this -- how a particular initiative is going to
24 be treated within inspection and enforcement space needs to be
25 clearly identified.

1 And we had that as one or two of the topics that need
2 to be discussed. If nothing else, the guidelines need to say
3 there needs to be -- it needs to be written down someplace that
4 this is the part of this that is necessary to comply with a
5 certain regulation, and the rest of this is good practice or
6 whatever.

7 So that needs to be captured, and we agree with that.

8 MR. VINE: Part of the issue, in answer to your
9 question about what the concern is, you have to kind of take a
10 step away from the arena that you guys deal with and that NEI
11 deals with all the time where there is a sophisticated
12 understanding of both the technical and the licensing side of
13 all these issues.

14 There are lots of industry groups out there, special
15 issue groups. There are owners groups, there are all the EPRI
16 committees.

17 We don't have that sophistication on the licensee
18 side. All these groups are really focused on one thing only,
19 and that's doing the right thing.

20 And they're vulnerable if you set up a process that
21 is -- that could be abused, to sweeping a lot of stuff like
22 good practices, into enforcement.

23 And even though that won't happen when you're
24 developing an NEI guideline, I think the process you set up has
25 to be rigorous enough so we can go to the utility execs and say

1 this is good enough so that one of these groups that just wants
2 to do the right thing isn't going to get trouble on the
3 licensing side.

4 We've got a rigorous enough process where we're
5 watching out for that -- the commitment and inspection and
6 enforcement side of this through the NRC and NEI interactions.

7 MR. HERMAN: I think that you've got to recognize
8 that the Commission -- the industry is a bunch of big boys.
9 And when they have significant issues, I can't believe that
10 they are going to be that naive as to not have management
11 oversight of what they're doing.

12 To have a thought that a technical group is going to
13 go out there and do their thing, and cut a deal with the NRC on
14 this is what we're going to do to address an issue, without
15 having oversight of relevant utility management, to me, is
16 totally naive.

17 And it's absolutely --

18 MR. STROSNIDER: I don't think --

19 MR. VINE: But why not have a rigorous process.

20 MR. STROSNIDER: I agree with what you said. I mean,
21 take yes for an answer. This needs to be well defined in
22 enforcement, inspection, compliance space.

23 The protocols, the guidelines, need to say how that's
24 going to happen.

25 MR. BATEMAN: In terms of doing that generically, it

1 might be, to the extent -- in these up-front get-together's on
2 each one of our individual issues, that we make the decisions
3 at that point, what's going to be --

4 MR. STROSNIDER: That's right. What we're trying to
5 do here is put together a process. And as we just discussed,
6 for different initiatives, all right, they're going to fall
7 into different bins in terms of what's driving them, and what
8 the compliance is, et cetera.

9 And from a process point of view, all right, what we
10 need to do is make sure we've got a step in here where we all
11 agree that that's going to be defined and how it's going to be
12 defined.

13 Is it going to be written down? Is it going to be
14 sent to NEI? And does NEI distribute it to the industry? And
15 the industry looks at it and says, yes, we understand it, we
16 agree with it, and it comes back, and everybody has a mutual
17 understanding.

18 So, because -- and we will try as hard as we can to
19 make this thing general so that it will capture all the
20 different situations that could come up.

21 Actually, I'd say take yes for an answer. I think I
22 understand the issue and that we need to make sure that we
23 address those issues of inspection and enforcement; that
24 there's a process here for make sure that we characterize it.

25 MR. BATEMAN: Jack, am I clear now that any -- that

1 in terms of voluntary industry initiatives, we're going to need
2 to address inspection and enforcement? We're only talking
3 about those initiatives that relate to adequate protection,
4 51.09.

5 MR. VINE: That's the basic foundation for that. Or
6 are we really talking about things that maybe don't meet that
7 threshold, but yet we still -- like, I don't know if BWRVIP
8 would meet that threshold.

9 MR. STROSNIDER: I think that's part of the concern
10 that's raised here.

11 MR. VINE: Part of it does; part of it doesn't.

12 MR. BATEMAN: I'm not sure that we've come to that
13 agreement in this meeting that we've had, that that's going to
14 be the basic foundation. We're going to be limited to
15 considering inspection and enforcement only for those issues,
16 or are we really still back where we were before where for some
17 yes, for others, maybe?

18 MR. STROSNIDER: We have to work out and come back to
19 the flow chart idea here, which is always, I think, a good
20 idea. Start with what we had in the SECY.

21 We identified four different definitions, all right.
22 And so we said here's four different areas in which could bin
23 voluntary initiatives.

24 Now, if you started with those four, at some point,
25 all right, then you come down with each one of those. It's a

1 more detailed chart.

2 But one of those was, here's industry initiatives
3 that enhance good practice that have no regulatory compliance
4 or backfit at all. And when you follow that down and you get
5 to the box that says how do I treat this in inspection and
6 enforcement space, you basically say, this thing had nothing to
7 do with complying with the regulations.

8 It doesn't need to be inspected; it doesn't need --
9 it's not going to be enforced against.

10 Now, there's another one over here that says if we
11 identified a compliance issue, and when you come down on that
12 one and you get to the box on how do you inspect and enforce,
13 the process is, you need to identify very clearly what
14 regulation or requirement it is that you have to comply with,
15 all right, and how does that fit into the oversight process?

16 MR. BATEMAN: You can say Appendix B.

17 MR. STROSNIDER: It may be Appendix B in some cases

18 --

19 MR. BATEMAN: My understanding is that that isn't the
20 concept that they're presenting here. Well, one is to be able
21 to say that they didn't follow their procedure, but therefore
22 it's in Appendix B, but it doesn't meet the proof test here of
23 being an adequate protection, or 51.09.

24 MR. HERMAN: It's not just 51.09; it's a compliance
25 exception to 51.09.

1 MR. STROSNIDER: Let me ask the industry the question
2 then. What Bill is suggesting is that there is no enforcement
3 against Appendix B. I think what I heard is --

4 MR. BATEMAN: I don't know.

5 MR. STROSNIDER: I think what I heard is that you
6 need to some clear understanding of what you're doing that's
7 satisfying Appendix B, versus what you're doing as what I'll
8 characterize as good practice.

9 And do we have agreement, I think, with the industry
10 in BWR VIP space. We had discussed this at public meetings
11 with regard to why are we writing these safety evaluations?
12 What's the purpose of these?

13 And we talked around that and we concluded that,
14 well, this is really something that we're saying is an
15 acceptable way to satisfy Appendix B.

16 Now, if you push hard on those reports, there is some
17 stuff in there which I'm sure if we came out and cited you
18 against Appendix B, you'd say, wait a minute.

19 MR. VINE: Not in the spirit of the --

20 MR. STROSNIDER: And Appendix B, unfortunately,
21 always has those shades of gray in it and we're not going to
22 fix that here.

23 But in general we said this is an initiative which
24 has elements in it that satisfy Appendix B, all right? It's
25 not 50.55(a); it's not some GDC. It's not this; it's not that,

1 it's Appendix B.

2 MR. MARION: The key point is that you had a
3 discussion with industry to reach that understanding and
4 agreement.

5 MR. STROSNIDER: Yes.

6 MR. MODEEN: They may not be hard to do, Alex, up
7 front, before you ever get down --

8 MR. STROSNIDER: In some issues it's going to be
9 easier than others.

10 MR. MODEEN: It's the same thing in doing a
11 regulatory analysis. You might have an inkling of it, but you
12 may not have it till you --

13 MR. STROSNIDER: It will be hard to do, but we need
14 to force ourselves to do it up front.

15 MR. VINE: Or at least have a tentative answer to the
16 question.

17 MR. STROSNIDER: We didn't start dealing with this
18 issue as hard as we should have on the VIP initiative until we
19 were already down the road writing some of these safety
20 evaluations.

21 Senior management said, why are we writing the safety
22 evaluations? Why are spending all these resources looking at
23 this? What's the point here? What's the regulatory nexus?

24 And that's when we started thinking about it and we
25 had the discussions and we came to a mutual understanding.

1 MR. HERMAN: I'll go back to where I think we are in
2 terms of enforcement, again. And I agree with you that you
3 need to do it up front, et cetera.

4 That is clearly compliance, okay? It's things that
5 are within the design basis, and typical compliance type of
6 approach to things.

7 This is things like severe accidents that if you'd
8 ask me, the only basis for enforcement the NRC has is to write
9 an order if we're dissatisfied with what's going on at the
10 site.

11 There's not citing against Appendix B for this kind
12 of a thing.

13 This is the other stuff, and this is adequate
14 protection that is outside of the scope of the thing.

15 And I don't think there's a problem with the
16 definitions.

17 MR. MARION: We talked earlier about the terminology
18 in terms of the substitute for regulatory action. We also
19 talked about generic letters.

20 And whether we want a letter or not, we've got to
21 resolve the generic communication process. Clearly you're
22 thinking of generic letters as one way of communicating the
23 agreements and understandings relative to these voluntary
24 industry initiatives.

25 MR. VINE: Can I talk to some points on Bob's slide?

1 Let me take the bottom one first about adequate protection.

2 The point on adequate protection is worded
3 differently in different parts of SECY 90-63. On statement
4 that is correct is that --

5 [Laughter.]

6 MR. VINE: I said that wrong. I'm sorry. Where in
7 the SECY it says that if there is an adequate protection issue,
8 the NRC must address it. That's a true statement.

9 There is another place in here that says if there's
10 an adequate protection issue here, it cannot be dealt with the
11 voluntary industry initiative.

12 That's not true because if there is an adequate
13 protection issue, there's an interest on the part of both the
14 NRC and the industry in fixing it, and the industry will likely
15 propose some things.

16 But you can accept or reject those. You have to take
17 regulatory action, but the industry is not prohibited from
18 proposing some solutions.

19 MR. HERMAN: I think you're misinterpreting what was
20 meant. I think what was meant is the definition that if things
21 are a regulatory -- are an adequate protection issue, it's our
22 responsibility.

23 MR. VINE: Right.

24 MR. HERMAN: The way for addressing that issue might
25 be something like a complementary guide from the industry.

1 MR. VINE: On the first bullet, within the design
2 basis, I'd again get back to the statement of consideration of
3 the backfit rule.

4 It's not just that if it's within the design basis,
5 I'd again get back to the statement of consideration of the
6 backfit rule.

7 It's not just if it's within the design basis that
8 it's automatically a compliance issue. If this is just a new
9 interpretation of what the design basis requires, that does not
10 qualify as a compliance issue. It has to be a new finding of
11 fact as opposed to a new interpretation.

12 MR. HERMAN: That's in the eye of beholder, that one.

13 MR. VINE: I understand. But it's an important
14 distinction.

15 MR. STROSNIDER: I just want to make a point, and you
16 may have some more to say here, Gary, but I just want to make
17 the point that we would encourage comments on these
18 definitions, all right?

19 We'd encourage comments on these definitions in the
20 context of how they fit in the rest of the process, okay? I
21 think the SECY paper, some of the earlier definitions tried to
22 follow the logic of 51.09 much more explicitly, all right?

23 Now, I said earlier we need to make sure we're making
24 use of existing processes, et cetera, bringing design basis
25 into this when we're off having all these discussions about

1 what the design basis is.

2 You know, you may have some comments on that.

3 MR. VINE: Right.

4 MR. STROSNIDER: Whether you think that's good or
5 bad, or that you think paralleling 51.09 makes more sense.

6 But I think, in general, the point here is that we do
7 know there are some different categories of voluntary
8 initiatives, and we need to come to some agreements on how we
9 define what they are and the process by which we deal with each
10 of those will be somewhat dictated by what the nature of the
11 issue is.

12 MR. VINE: And the points on the second and third
13 bullets, I guess, are pretty obvious. The second bullet point
14 would be that justifiable as a safety enhancement is, of
15 course, as defined by the 51.09 process.

16 And the third bullet is certainly the industry will
17 take on these issues because of the savings involved. But
18 those initiatives don't meet the 109 criteria, and therefore
19 we're not into any kind of inspection/enforcement space on the
20 third bullet.

21 MR. HERMAN: That's on another slide somewhere.

22 MR. VINE: I guess another point on that last area
23 is, in the SECY you have the four bins that you create based on
24 the definitions in 51.09.

25 There is one bin that's kind of missing, and it's a

1 very important bin. The first three bins all have to do with
2 either adequate protection or issues that clearly fall within
3 the 51.09 criteria.

4 And the fourth bin is of no regulatory interest.

5 There is this middle area that we really need to deal
6 with, and that is issues that are of real concern to the staff,
7 but don't meet the criteria.

8 That's what this whole center piece of this flow
9 chart is all about, items that don't meet the criteria, but you
10 still have concerns about them or some members of the staff
11 have concerns about them.

12 And this whole process is to show you what the
13 industry is doing with those on a voluntary basis. After all,
14 VII -- we forget the word, voluntary, in here.

15 The crux of this ought to be what the industry is
16 doing on a voluntary basis to deal with those issues, and we'll
17 keep you informed. But there is no way that
18 inspection/enforcement come into play in those areas, unless
19 you go through the more rigorous process at the bottom.

20 MR. BATEMAN: Well, I thought we had just agreed that
21 in those multitude of areas where the staff has concern, that
22 there's -- as you just characterized, but that we may not want
23 to totally give up all of our enforcement rights, and that we
24 would agree in up-front discussions for each one of these
25 voluntary initiatives, where those areas would be.

1 My sense is -- and maybe we're off base here. Maybe
2 the NRC is off base, but my sense was, we're going to have more
3 than a few voluntary industry initiatives.

4 I seem to get the sense you think there's only going
5 to be a very few voluntary initiatives.

6 MR. VINE: There are lots of them that fall below the
7 threshold of formal SIAC commitments. There are things that
8 are going on all the time in the owners groups at EPRI that are
9 developing guidelines where we're taking staff input.

10 But they don't rise to the level of meeting the 51.09
11 criteria.

12 MR. HERMAN: But I think the difference is that if we
13 have this process up front, okay, these may not get formalized
14 in this protocol in that process. Either they're kind of in
15 the bottom or there is something that will make it on the top
16 for the 1.09 criteria, and they're just outside of the more
17 formal approach.

18 MR. MARION: It seems to me there are fundamental
19 concepts. I'm really getting sensitive to continually bring
20 this up.

21 There are comments on the generic communication
22 process. What we tried to do is get down to basics.

23 What is your expectation with these various products?
24 And we're here talking about basics again.

25 What is the basis for your expectation of inspecting

1 and enforcing voluntary industry initiatives? I submit that
2 there are two fundamental bases for your expectation:

3 One is the 51.09 criteria, very disciplined, rigorous
4 process; the other is, if a voluntary industry initiative is
5 implemented by a licensee within your 10 CFR Part 50 regulatory
6 framework.

7 It could be like the VIP where they implemented it
8 under Appendix B. That's fair game for inspection and
9 enforcement.

10 And those are the two fundamental concepts, the way
11 we see them. And I would ask you to consider that. Anything
12 else outside of those two, I'd have difficulty rationalizing in
13 my mind.

14 Is there some other consideration?

15 MR. STROSNIDER: I agree with what you say, okay. To
16 give a bigger picture of what our considerations in
17 establishing what this framework is, all right, I'll come back,
18 and I think there was some discussion earlier in the meeting:
19 maintaining safety and 51.09.

20 MR. MARION: Absolutely.

21 MR. STROSNIDER: Reducing burden. Part of what we're
22 trying to accomplishing by doing this, we think, is to reduce
23 burden on the industry, all right?

24 And I can go through the list: Public confidence,
25 you know, we need and Bob was talking earlier about we need to

1 have some steps in here about how are we going to allow other
2 stakeholders to have input and to see what's -- keep them
3 informed and see what's going on.

4 Efficiency and effectiveness, also when we go through
5 this process, we want to make sure that we've got the minimum
6 number of boxes so that it's efficient and that we're working
7 on the right thing.

8 So, from the big picture, we come back to our four
9 outcome goals. But what you said, Alex, I don't think anybody
10 would disagree with in terms of implementation; that they're
11 going to fall out in those area.

12 MR. HERMAN: I think that second one that's up there
13 falls in that other category. It's really not --

14 MR. MARION: Maybe we need to get back to
15 articulating these fundamental concepts as part of the process.
16 I can tell you, people are reacting to terms, substitute for
17 regulatory action. People are reacting to --

18 MR. HERMAN: How about some --

19 MR. MARION: It's outside the design basis, well, if
20 it's outside the design basis, then what's the issue?

21 MR. HERMAN: How about providing some alternate
22 wording?

23 MR. STROSNIDER: We're interested in feedback. There
24 is a set of definitions in the SECY. This was some more recent
25 thinking that reflects some 51.09. It's got some other ideas

1 in it.

2 MR. HERMAN: This is only one slide out of the
3 process.

4 MR. STROSNIDER: I'm just talking about the
5 definitions.

6 MR. MARION: We'll take that as an action and provide
7 you with some comments.

8 MR. CARPENTER: What is your definition of what is a
9 voluntary industry initiative? This is what we thought it was.
10 What does the industry think it is?

11 MR. HERMAN: If you want to provide a revised
12 definition for these things, we're perfectly amenable to doing
13 it. We might probably revise them anyway, based on today's
14 discussions.

15 But I sure would like to have it writing.

16 MR. MODEEN: Yes, that's a great idea, and we've got
17 some things. But I think just in light of that, I'm not going
18 to give you the definition, but again I keep -- I think Tim
19 raised an interesting thing again.

20 When you transition from voluntary to otherwise, then
21 my sense is most of the reasons, issue groups and NEI and EPRI,
22 when we have the interactions with the staff, it's to try to
23 figure out what's an acceptable way to resolve the issue,
24 whatever the issue is or the concern?

25 And we get to the end of that process and we figure

1 out where does it fit in regulatory space? Well, oftentimes,
2 you kind of lose that voluntary. The industry initiative was
3 to help go figure out what the right solution was.

4 Well, then maybe we get to the endpoint and we say,
5 gee, it's not longer a VII. I mean, when I get this license
6 change package --

7 MR. MARION: It's Roman Numeral VII.

8 MR. MODEEN: Yes, Roman Numeral VII. It's no longer
9 a VII from that piece.

10 MR. STROSNIDER: I mean, I keep coming back to -- and
11 I'm going to make two comments on that.

12 All right, we keep dropping off the part, in lieu of
13 regulatory action. Where we talk about substitute there,
14 that's what we're talking about doing.

15 That was our concept, and we're open to discussion
16 and comments on that. We clearly would have to explain that to
17 our other stakeholders, that in lieu of our putting out a
18 generic letter, as an example, we're going to rely on this
19 industry initiative, all right?

20 But the other thing is, so, when you look at that and
21 you say, well is that really voluntary, well, it's -- the only
22 thing is that it's voluntary that you're going to do that as
23 opposed to have us send out some generic communication or
24 whatever form it takes.

25 And if we have something which meets one of the 51.09

1 backfit criteria, all right, then clearly, you know, we could
2 take that action and it's not voluntary. You've got to bring
3 yourself back into compliance or you've got to do the
4 cost-beneficial enhancement or whatever.

5 But the one category that in the SECY paper
6 definition at least, or in here, things that are just outside
7 NRC interest, purview, those are voluntary. You can go do it
8 if you want; we don't care, fine.

9 We may have to support you on some of those things.
10 It may require a change in the regulations, some change in the
11 code or whatever.

12 MR. HERMAN: Would you think that that first
13 definition could be improved by adding for issues within the
14 design basis and triggering the 10 CFR 51.09 criteria? We
15 would have no problem adding that.

16 MR. VINE: The problem is that you're talking at this
17 from the NRC's perspective. The industry has a lot of
18 initiatives that aren't linked to a regulatory requirement.

19 And you almost have to define voluntary industry
20 initiatives in some groupings or categories. There this type
21 and there's this type and there's this type.

22 MR. BATEMAN: It's my sense from this meeting that
23 your position is that a voluntary industry initiative is not
24 something that the NRC could otherwise regulate. You don't
25 want a voluntary industry initiative to be something that's a

1 substitute for a regulatory action. You said that earlier.

2 If there is a regulatory action that we feel we need,
3 we ought to go do it through rulemaking or whatever, not turn
4 it over to you guys instead of doing that.

5 MR. MARION: We still may do something, but you then
6 embody that.

7 MR. VINE: We still may do something, but you still
8 expect us to do something in a regulatory perspective -- in the
9 mode of thinking that, hey, we could do something from the
10 regulatory view position, but we're not going to because you
11 guys are volunteering to do something in lieu of that.

12 I think we're still disconnected there.

13 MR. HERMAN: We've turned it into the cup is half
14 full or the cup is half empty.

15 MR. MODEEN: If I could, I guess it's part of this in
16 lieu of that's maybe hanging things up. I ultimately --
17 everything we've done that would initiate a formal industry
18 position, ultimately there is some regulatory action and that
19 might be that you accept the solution that the industry
20 identified.

21 And so I think we've very much onboard on a lot of
22 these things, early and often, and let's not just get the
23 generic letter thrown out there, but let's work on the issue
24 and figure out the process.

25 Oftentimes it's easy to come to the solution; other

1 times it's very difficult, but we eventually come to some
2 solution. And then there really is a regulatory action.

3 I may not be anything more than under the new
4 Regulatory Information Summary Letter, acknowledging that here
5 was the issue, here was the concern, there is the outcome, this
6 is what's agreed to be done or something like that.

7 That's opposed to, gee, you had to do a GAL asking
8 everybody for action when we're not trying to get right to that
9 piece. But it just seems like ultimately the staff does need
10 to take some sort of action.

11 MR. CARPENTER: The bottom line question here is,
12 which would you rather have take place? We, the staff, come
13 out and tell you what it is we think you need to do, or you,
14 the industry, come back to the staff and say here is the issue
15 that you have identified or that we've identified, and these
16 are the things that we want to do? And we, the staff, say,
17 yes, that's good enough.

18 MR. HERMAN: But they're saying to back off on
19 enforcement effects.

20 MR. VINE: We're saying it's the latter with one
21 caveat. And the caveat is if it rises to the level of 1.09,
22 you guys need to take additional action over and above our
23 voluntary actions to codify what is necessary for inspection
24 and enforcement.

25 MR. STROSNIDER: There are a couple of issues

1 bouncing around here. And I think one is that the main thing
2 that NRC was trying to address when we started working on this
3 was the issue of generic letters, 51.09 compliance, and how do
4 we deal with issues in that arena.

5 We did acknowledge that there are other industry
6 initiatives that fall outside of all that. But I think you've
7 raised a whole different question of a whole different set of
8 initiatives and whether we want to put them in this process or
9 not.

10 To try to think of an example which is maybe -- EPRI
11 has programs to develop improved repair methods for components,
12 whatever it is.

13 Now the NRC, we are not out there saying, gee, you
14 need to improve repair methods in order to satisfy -- to comply
15 or for any of these other reasons, but it is something that you
16 want to do.

17 The NRC is involved in it. You come in, periodically
18 brief us when you are working on these various methods. Maybe
19 at some point if they find themselves in code cases or
20 whatever, you would like us to endorse them, and we have got a
21 role in that, but you have got a whole lot of initiatives going
22 on which are not directly related to maintaining compliance or
23 51.09 type activities.

24 What you are saying is you don't want to be held --
25 that every one of those things doesn't result in something

1 that is enforceable. Now in some cases it does and the example
2 I picked perhaps, a repair on a primary system component, is --

3 MR. HERMAN: Is an alternative repair.

4 MR. STROSNIDER: -- is an alternative repair, a new
5 repair method. Maybe it does, but I am sure there's other
6 examples you could give where it doesn't. It's just practice in
7 the plant. You mentioned water chemistry before.

8 We try to stay out of the issue of secondary water
9 chemistry in steam generators. I think rightfully so.

10 MR. HERMAN: But design of mechanical repairs that
11 are clearly alternatives under 50.55(a)(3), those are clearly
12 regulatory actions under an existing rule.

13 MR. STROSNIDER: But nonetheless, just to make the
14 big picture point that there is a set of industry initiatives
15 out there and EPRI probably is doing a lot of these, a lot of
16 this type of work which is not of interest in the context of
17 51.09.

18 MR. COLLINS: I would like to go back to Bill's point
19 though -- I mean Bill's point in the shutdown rule again.

20 Remember when we did the shutdown rule backfit
21 analysis that says cost beneficial safety enhancement. The
22 Commission said yeah, but it looks like the industry is already
23 putting into place most of the things that the rule would
24 require, and if we codified it that's going to add the
25 additional burden of being in the regulatory process.

1 Why should we add that additional burden to the
2 industry to accomplish the same level of safety we have already
3 got? That's basically the Commission's thinking, so they say
4 don't put the rule out there, but they say in the SRM however
5 you have proven that this would be a cost beneficial
6 enhancement in terms of strict regulatory space. How are we
7 going to assure that the industry continues to do these things
8 that we have given them credit for, for making this decision?
9 So the SRM says figure out a way to do inspection -- I don't
10 know if they said enforcement or not in the SRM --

11 MR. HERMAN: Inspection.

12 MR. COLLINS: Inspection, okay, and so I think that
13 part of the question, I don't see that that is necessarily
14 being addressed here. How do we do that inspection part of the
15 process where we have gone through the cost benefit analysis,
16 shown that this would be a justified regulation. In the
17 interests of unnecessary regulatory burden it says we don't
18 need to put this in place formally. Now how do we keep the
19 monitoring processing, which would be there --

20 MR. STROSNIDER: I'm glad you brought up that
21 example --

22 [Laughter.]

23 MR. HERMAN: Let me try -- because we talked about
24 that with the enforcement people, and what you are talking
25 about is inspecting something that isn't clearly -- that isn't

1 a regulation.

2 MR. COLLINS: Right. That is the problem.

3 MR. HERMAN: Well, I'll give you the answer that we
4 got and we got it from the lawyers -- same thing. I think you
5 heard it from Dean earlier this morning. It is within the
6 current scope of what that new regulatory program is -- if it
7 is risk significant they are going to look at it.

8 MR. MARION: Right. Events, not the program
9 processes or anything like that -- the events that occur while
10 the plant is in that condition.

11 MR. HERMAN: I am not sure whether that's right.
12 What Bill said is they go out and look at what somebody is
13 doing for severe accidents and if somebody is not doing
14 anything, they would come back and say they are not doing
15 anything, and I think what Brian said was that it would come
16 back to Headquarters and then you decide it's time to write an
17 order or not write an order.

18 There is no enforcement there. What it is is go out
19 and either put the rule in place or write an order. I think
20 that is where you stand on this stuff. Do you guys disagree
21 with that?

22 MR. MARION: No, I thought it was kind of
23 interesting, the perspective that Tim offered relative to the
24 dilemma the SRM has created for the Staff. It's the first time
25 it was brought to my attention and it is an interesting

1 program. I am curious about your solution.

2 [Laughter.]

3 MR. STROSNIDER: When you take it to the point of
4 justified a backfit under 51.09 and then you say, okay, but we
5 are not actually going to do that, we are not actually going to
6 change the regulation or whatever, and then you try to inspect
7 and enforce against it, you have got a disconnect.

8 MR. HERMAN: But that was a particular issue that was
9 discussed at an enforcement meeting that we did internally with
10 OGC and OE. Tim, I think you were at the meeting, the early
11 one, and you know, what I think I conveyed was the position
12 that came out of our legal staff.

13 MR. STROSNIDER: Well, sure. You always have the
14 option of coming -- of the region coming back to Headquarters
15 and saying this is what we have observed, do we want to revisit
16 the process, and do we want to issue -- take some action at
17 this point because we are not happy with what it going on, but
18 that is not inspection and enforcement. That is a different
19 process.c

20 MR. HERMAN: That is rulemaking.

21 MR. BATEMAN: I would like to clarify something, a
22 conclusion I think I have come to. I just wrote it down here.
23 It says it is not clear to me if NEI wants us to do a voluntary
24 industry initiative if it is in lieu of a regulatory
25 requirement.

1 That is kind of the gist I got out of it, so if that
2 is the case, then what is a voluntary industry initiative.

3 MR. MARION: That is the question I asked you
4 earlier.

5 [Laughter.]

6 MR. BATEMAN: We laid on the table what we thought a
7 voluntary industry initiative is. You guys said nah -- because
8 what we said -- what we thought a voluntary industry initiative
9 would be would be something that would be in lieu of a
10 regulatory requirement. Now you are saying no, we don't want
11 voluntary industry initiatives of that type, so therefore I am
12 confused as to what the heck a voluntary industry initiative
13 is.

14 MR. HERMAN: Let me try -- since I think we have
15 about killed this --

16 MR. MARION: We will send you a comment letter.

17 MR. HERMAN: That is what I was going to say, and
18 specifically what I would like, I think I would like to see in
19 the comment letter is address that. You have that from the
20 last meeting. What we are going to do as part of the meeting
21 summary is include our comments on this and put them in the
22 meeting summary.

23 Does that sound like a vehicle of getting them to
24 you? We can do it that way.

25 MR. MARION: We value that too for purposes of

1 discussion interaction, so give us your comments and feedback.

2 MR. HERMAN: Well, we were going to stick it in the
3 meeting summary.

4 MR. MARION: That's fine. Anything else?

5 MR. STROSNIDER: I think the other thing is that
6 whether it is in your -- whenever, however you want to get this
7 to us, if you want to send us a letter as a result of this
8 meeting, or in response to the Federal Register notice, that's
9 probably the best way to do it.

10 Again, to come back to the big picture, you know, we
11 were trying to take on an initiative here, an NRC initiative --

12 MR. MARION: Voluntary --

13 MR. STROSNIDER: -- where we thought that we could
14 come up with some mechanism again for reducing unnecessary
15 burden and having a more efficient, effective process.
16 Maintaining safety is a given in what we are going to do here,
17 but that is really what we thought we could accomplish.

18 We need your perspective on those kind of questions
19 like if we come to a conclusion that we could issue a generic
20 letter based on compliance or whatever, from the industry's
21 perspective, is it better for us to go ahead and issue that
22 letter given that we have had upfront discussions on what it is
23 we are trying to accomplish and how we will accomplish it, or
24 is it better that we not issue it and have discussions about
25 the industry taking on that action without having the letter in

1 hand? Again, we are trying to accomplish what is a more
2 efficient process for doing this.

3 It may be that, gee, once we get to the point if we
4 have enough upfront discussion, and everybody agrees that, yes,
5 there is a compliance issue here, and maybe the generic letter
6 helps somehow, maybe you want to tell us yes, put the letter
7 out -- given that it has gone through the right process.

8 If that is the answer, okay. We need your feedback
9 because we are trying to make things better.

10 MR. MARION: It starts with taking that generic
11 communication process to its fundamental form. Same issues.
12 Take a look at that letter. It is like deja vu all over
13 again -- and I quote Yogi Berra.

14 MR. HERMAN: Okay, but what we would like to agree
15 that we have at least agreed to is that we have agreed that
16 early in the process development one thing that will be in
17 there will be a meeting between NRC and NEI and at that point
18 we will have gone to the point to do the best job we can in
19 terms of running things through our internal process and
20 characterizing things in terms of 109, adequate protection, or
21 whatever other criteria -- you know, those type of criteria, to
22 bring it at the meeting.

23 It is not a final determination, but we will do that
24 upfront and that will be the starting point.

25 MR. STROSNIDER: For NEI and other stakeholders.

1 MR. HERMAN: Yes, it is a public meeting.

2 MR. MARION: You mentioned the Federal Register
3 notices.

4 MR. CARPENTER: Yes, anybody who would like a copy of
5 that, see me after the meeting.

6 MR. MARION: What is the date of it?

7 MR. HERMAN: December 13th. It is Federal Register,
8 Volume 64, No. 238 and page 69,574.

9 MR. MODEEN: The topic is development of guidelines
10 for voluntary industry initiatives and notice of public meeting
11 with the Nuclear Energy Institute.

12 MR. CARPENTER: Well, that is the meeting notice.

13 MR. MODEEN: Oh, is that the meeting notice?

14 MR. CARPENTER: It is combined.

15 MR. MARION: Oh, it is combined.

16 MR. CARPENTER: Yes.

17 MR. MARION: So are you asking for comments?

18 MR. CARPENTER: Yes, we are.

19 MR. MARION: And what is the timeframe?

20 MR. CARPENTER: We were supposed to operate this
21 meeting until Noon and we are five minutes of. Let's go ahead
22 and start wrapping things u here.

23 Basically we have on our schedule that we put out a
24 Federal Register notice, which we did, a couple of days late,
25 requesting comments by January 15th.

1 Obviously if you get it in after that time we will
2 look at it as much as possible, but we are trying to get the
3 guidelines drafted and put together by March 30th of the Year
4 2000, so that we can meet our commitment to the Commission to
5 have it in their hands by May 24th, 2000.

6 If we need to have a meeting between now and March
7 30th once further comments come in from you guys, please let us
8 know. We will certainly set one up.

9 For those in the audience who would like to
10 participate and send in comments, yours are more than welcome
11 also.

12 MR. STROSNIDER: I understand. I think the way this
13 is working now, the guidelines go into the Commission on the
14 24th. Those are guidelines we propose to put out for public
15 comment.

16 MR. CARPENTER: We will have the comments out after
17 the Commission gets it.

18 MR. HERMAN: After the Commission does it.

19 MR. STROSNIDER: That's what I said. We are telling
20 the Commission this is what we propose to put out for public
21 comment.

22 MR. CARPENTER: Yes.

23 MR. HERMAN: Give us your input.

24 MR. STROSNIDER: Yes -- and the Commission agreed
25 that we should put these out --

1 MR. MARION: I would encourage you to release the
2 SECY at the time that it is developed and forwarded to the
3 Commission, because fundamentally you are trying to articulate
4 a process by which you are going to inspect and enforce
5 voluntary initiatives developed by the industry, and I think it
6 is proper for them to request -- to have an opportunity to
7 comment on what you are recommending before the Commission
8 decides.

9 MR. STROSNIDER: That's what this says, but -- the
10 point I was trying to made though is there's a relatively short
11 timeframe, January 15th I guess, which isn't on there, of 14th
12 did you say?

13 MR. VINE: The 15th, so we would like to have this
14 thing and the best recommendation we could send up in term of
15 having industry and stakeholder input --

16 MR. HERMAN: I would say we could deliver them by the
17 end of January perhaps, but I think if it starts dragging much
18 later than the end of January, very early in February, then it
19 is going to give us real problems in terms of getting the paper
20 ready.

21 MR. STROSNIDER: The point I was going to make is
22 that is not the end of the discussion. This is so we can put
23 together the proposal to go up to the Commission, get their
24 feedback, and then there will be another round of discussion on
25 this, but we want to send up something that reflects the main

1 issues and some of these things we were talking about are very
2 fundamental and so that kind of input -- we would really like
3 to have that so we can reflect it.

4 MR. HERMAN: Even if we don't come to agreement on
5 the issues, okay, at least we can provide both sides in the
6 paper.

7 MR. STROSNIDER: We said back in Chicago and I would
8 reiterate that the ultimate voluntary initiative is for the
9 industry to come in with the framework for the voluntary
10 initiatives. I mean we are open to the --

11 MR. MARION: That's a start.

12 MR. STROSNIDER: -- to that degree that if NEI on
13 behalf of the industry wants to say here is a straw man,
14 whether it is in the form of a flow chart or whatever level of
15 detail you think you can support, we are interesting in
16 soliciting that kind of input.

17 MR. HERMAN: Just one other thing before we wrap up.
18 We did go through the Staff and one of the other things we were
19 asked to do in terms of looking at this whole process was see
20 the interest in other places. We did go through it with the
21 other offices and at this stage of the game it is mostly NRR
22 interest.

23 MR. MODEEN: One thing I almost brought up and then
24 didn't -- when you were talking about what is the right place
25 to do the 51.09 evaluation of backfit or otherwise and maybe

1 you can get a sense but then you'd do it in more detail later.
2 The thing that occurred to me is when you look at things like
3 the GSIs that we are involved and industry is involved with
4 Research, looking at performance or otherwise and one of the
5 issues we are trying to scope out, and the Staff is too, is
6 what is the significance of that issue? What is the value
7 gained taking some sort of actions?

8 I would think there are some lessons perhaps in also
9 the interactions that the industry has had with RES in addition
10 to our focus on --

11 MR. HERMAN: Let me -- Research is interested in what
12 is going on.

13 MR. CARPENTER: NMSS --

14 MR. HERMAN: NMSS doesn't feel that they have enough
15 groups -- cohesive groups -- to be able to do things
16 generically. I think that is really why they --

17 MR. CARPENTER: And just to summarize for a moment
18 what we are doing here in the immediate future, as we said, is
19 we are trying to gather up all the comments from the public so
20 that we can put together a draft guidelines.

21 If anybody would like to have a meeting at some point
22 after we get the comments in and have had a chance to digest
23 them, please let us know. We will go ahead and try to arrange
24 a meeting at the earliest possible date to get yet more
25 comments in on the guidelines before they are completely

1 drafted and put through the concurrence chain.

2 Something else that we are also going to be doing is
3 putting up a webpage on the NRC Home Page that will have all of
4 this information available for instant reference so that you
5 don't have to go out and try to find it.

6 That will include the meeting summary from today's
7 meeting and from the previous meetings that we have had, the
8 slides, and whatever else that we are working on at the time
9 that we can share with the public.

10 MR. HERMAN: But that is going to be somewhat
11 bureaucratic to be able to get that because our process now
12 requires us to go up through what level?

13 MR. STROSNIDER: 18th.

14 MR. BATEMAN: Bureaucratic?

15 [Laughter.]

16 MR. HERMAN: The other thing to keep in mind is that
17 process that we have developed at your request in terms of
18 meetings, it presents a problem with the timeframe for the
19 things we have got up here if we get comments to be able to
20 schedule a meeting because of the noticing guidance.

21 It is almost, what, three working weeks or three
22 calendar weeks? It is a long time.

23 MR. STROSNIDER: Well, if you let us know early, we
24 can notice meetings, and we don't like to cancel meetings, but
25 we can notice them and if it doesn't materialize, then that is

1 easier to do than to do it --

2 MR. HERMAN: If you really think that you really want
3 to have one before the stuff goes upstairs, let us know pretty
4 soon, and then we will do that.

5 MR. MARION: We will probably want one.

6 MR. HERMAN: Okay.

7 MR. MARION: I will give you a call.

8 MR. HERMAN: Maybe think about what a date is.

9 MR. MARION: Let me just make one observation. This
10 is extremely important, because if it is not done right, it is
11 going to have a chilling effect across the industry on future
12 activities that elements of the industry or EPRI or Owners
13 Groups, NEI, are going to do, so we have to put forth the time
14 and effort to get it done right and make sure that we
15 understand what the ground rules are.

16 That is what we have been talking about today, with
17 some of this fundamental concepts, and the sooner we can thrash
18 that out, the better off we will be in terms of the road to
19 success.

20 MR. HERMAN: Agreed.

21 MR. STROSNIDER: We have a commitment to the
22 Commission, all right, and of course that is important for us
23 to meet.

24 On the other hand, if there's input from industry and
25 stakeholders that there needs to be more discussion, there

1 needs to be more something -- for example, if the industry
2 wanted to develop some guidelines in this area and that is
3 going to take more time, I think, you know, you could probably
4 go to the Commission and say this is how the discussion has
5 progressed and we will give you a status report. There is more
6 to come later. We think it is appropriate because there's an
7 initiative to go off and develop this.

8 With good reason we can adjust this, but it is
9 important from our perspective to meet our commitments to the
10 Commission, so absent something like that, we are going to sit
11 down, take a shot at writing this --

12 MR. HERMAN: This is the third external stakeholder
13 meeting and I think we understand what your issues are
14 somewhat, okay, but I think to get them down and make sure that
15 we have got the essence of what is bothering you, I think we
16 need to get them in writing.

17 MR. MARION: You have a number of suggestions that
18 are directly applicable to this, and that is the comments we
19 have provided on the generic communication process.

20 MR. STROSNIDER: We'll be happy to look at it.

21 MR. MARION: Okay. Anything else?

22 [No response.]

23 MR. MARION: Mr. Chairman, thank you very much. We
24 have appreciated the opportunity and we will submit comments on
25 the FRN, et cetera.

1 I think the meeting was productive in terms of
2 talking about some of the issues but we need to work through
3 them.

4 I would like to wish you all a happy holiday.

5 MR. STROSNIDER: Yes, thank you very much and happy
6 holiday to everybody.

7 [Whereupon, at 12:05 p.m., the meeting was
8 concluded.]

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